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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 661.

HORACE G. ALLIS, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

FILED MARCH 12, 1894.

(15,530.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 16, 1894.

In the Circuit Court of the United States within and for the Western Division of the Eastern District of Arkansas.

UNITED STATES
vs.
HORACE G. ALLIS.

First count. Section 5209, Revised Statutes.

The grand jurors of the United States of America for the western division of the eastern district of Arkansas, duly empannelled, sworn, and charged to inquire within and for the
3 body of the western division of the eastern district of Arkansas aforesaid, upon their oaths present that Horace G. Allis, on, to wit, the 16th day of December, A. D. 1892, in the county of Pulaski, in the State of Arkansas and in the western division of the eastern district of Arkansas aforesaid and within the jurisdiction of this court, did then and there knowingly, wilfully, and unlawfully make a certain false entry in a certain report of the First National Bank of Little Rock, the First National Bank of Little Rock aforesaid being then and there a national banking association duly organized, incorporated, and created under and by virtue of the laws of the United States of America and doing a banking business at the city of Little Rock, in the county of Pulaski and State of Arkansas, of which said association, to wit, the First National Bank of Little Rock aforesaid, the said Horace G. Allis was then and there the president; which said report in which said false entry was then and there made as aforesaid was a report of said association, to wit, the First National Bank of Little Rock aforesaid, in that behalf required by law to be made to the Comptroller of the Currency, to wit, a report of the condition of the First National Bank of Little Rock aforesaid at the close of business on the 9th day of December, A. D. 1892, and which said false entry then and there made as aforesaid is as follows, to wit:

Under the head of—

Liabilities.	Dollars.	Cts.
"7. Individual deposits subject to check.....	$334,594	59"

Which said entry so made as aforesaid in said report under the head of liabilities, dollars, cts., to wit, "7. Individual deposits subject to check, $334,594.59," did in substance and effect declare that
4 divers persons, firms, and corporations to the grand jurors aforesaid unknown did then and there have money deposited in the First National Bank of Little Rock aforesaid in divers amounts to the grand jurors unknown subject to check, amounting in the aggregate to the sum of three hundred and thirty-four thousand five hundred and ninety-four dollars and fifty-nine cents, and that said First National Bank of Little Rock aforesaid was indebted to divers persons, firms, and corporations to the grand jurors aforesaid unknown for money deposited with said First National Bank of Little Rock aforesaid by said divers persons, firms, and corporations subject to check in divers amounts to the grand jurors aforesaid unknown, amounting

in the aggregate to the sum of three hundred and thirty-four thousand five hundred and ninety-four dollars and fifty-nine cents; and the grand jurors aforesaid upon their oaths aforesaid do further say that the said entry so made as aforesaid was then and there false in this, to wit, that the aggregate sum and amount then and there on deposit in said First National Bank of Little Rock aforesaid subject to check by divers persons, firms, and corporations aforesaid and which should have been placed in said entry was much less than said sum of three hundred and thirty-four thousand five hundred and ninety-four dollars and fifty-nine cents by many thousand- of dollars, to wit, one hundred thousand dollars, he, the said Horace G. Allis, then and there well knowing said entry made in said report as aforesaid was false as aforesaid, — he, the said Horace G. Allis, did then and there make and cause to be made the said false entry in the aforesaid report with the intent then and there wilfully, wrongfully, and unlawfully to deceive any agent then or who might thereafter be appointed under title LXII of the
5 Revised Statutes of the United States and the acts of Congress relating to national banking to examine the affairs of the First National Bank of Little Rock aforesaid and with the intent then and there wilfully, wrongfully, and unlawfully to deceive certain officers of the First National Bank of Little Rock aforesaid, the names of whom are to the grand jurors unknown, and with the intent then and there wilfully, wrongfully, and unlawfully to deceive and defraud the First National Bank of Little Rock aforesaid and divers other corporations, firms, and persons who were then doing or might thereafter do business with the First National Bank of Little Rock aforesaid, the names of said corporations, firms, and persons being to the grand jurors unknown, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Second count. Section 5209, Revised Statutes.

And the grand jurors aforesaid upon their oaths aforesaid do further present that the said Horace G. Allis, on the 16th day of December, A. D. 1892, in the county of Pulaski, in the State of Arkansas and in the western division of the eastern district of Arkansas and within the jurisdiction of this court, did then and there knowingly, wilfully, and unlawfully make a certain false entry in a certain report for the First National Bank of Little Rock, in the State of Arkansas, the First National Bank of Little Rock aforesaid being then and there a national banking association duly and legally created and organized and doing business under and by virtue of the laws of the United States at the city of Little Rock, in the county of Pulaski and State of Arkansas and in the west-
6 ern division of the eastern district of Arkansas aforesaid, of which said association, to wit, the First National Bank of Little Rock aforesaid, he, the said Horace G. Allis, was then and there the president; which said report in which said false entry was then and there made as aforesaid was a report of the First National Bank of Little Rock aforesaid in that behalf required to be made to the Comptroller of the Currency, to wit, a report of the condition of

the First National Bank of Little Rock aforesaid at the close of business on said 9th day of December, 1892, and which said false entry then and there made as aforesaid is as follows, to wit:

Under the head of—

Liabilities.	Dollars.	Cts.
"17. Notes and bills rediscounted.....	$121,180	84"

Which said entry made as aforesaid in said report under the head of liabilities, dollars, cts., to wit, "17. Notes and bills rediscounted, 121,180.84," did in substance and effect declare and mean and was intended to declare and mean that on the said 9th day of December, 1892, at the close of the business on that day, the notes and bills of exchange discounted and owned by the First National bank at Little Rock aforesaid had been by the First National Bank of Little Rock aforesaid endorsed and rediscounted, amounting in the aggregate to one hundred and twenty-one thousand one hundred and eighty dollars and eighty-four cents, which said promissory notes and bills of exchange were then a liability outstanding against the First National Bank of Little Rock aforesaid to the amount of the said sum of one hundred and twenty-one thousand one hundred and eighty dollars and eighty-four cents; and the grand jurors aforesaid upon their oaths aforesaid do further say and charge that said entry so made as aforesaid on the report aforesaid was then and there false in this, to wit, that on the close of business on that day, to wit, the 9th day of December, 1892, the promissory notes and bills of exchange which had been discounted and owned by the First National Bank of Little Rock aforesaid and which had been endorsed by the First National Bank of Little Rock aforesaid and which had been rediscounted by the First National bank aforesaid and were then outstanding and unpaid amounted in the aggregate to many thousand dollars more than the said sum of one hundred and twenty-one thousand one hundred and eighty dollars and eighty-four cents, to wit, one hundred thousand dollars more than the amount stated in said false entry in the report aforesaid, he, the said Horace G. Allis, then and there well knowing the said entry so made as aforesaid in the report aforesaid to be then and there false as aforesaid, and he, the said Horace G. Allis, did then and there knowingly, wilfully, and unlawfully make and cause to be made the said false entry in the report aforesaid with the intent then and there wilfully, wrongfully, and unlawfully to deceive any agent then or who might thereafter be appointed under title LXII of the Revised Statutes of the United States and the acts of Congress amendatory thereto to examine the affairs of the First National Bank of Little Rock aforesaid and with the intent then and there wilfully, wrongfully, and unlawfully to deceive certain officers of the First National Bank of Little Rock aforesaid, the names of whom are to the grand jurors unknown, and with intent then and there wilfully, wrongfully, and unlawfully to injure and defraud the First National Bank of Little Rock aforesaid and divers other corporations, persons, and firms, the names of said

corporations, persons, and firms being to the grand jurors unknown, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Third count. Section 5209, Revised Statutes.

And the grand jurors aforesaid upon their oaths aforesaid do further present that the said Horace G. Allis, on the 7th day of March, A. D. 1892, in the county of Pulaski, in the State of Arkansas and in the western division of the eastern district of Arkansas and within the jurisdiction of this court, did then and there knowingly, wilfully, and unlawfully make a certain false entry in a certain report for the First National Bank of Little Rock, in the State of Arkansas, the First National Bank of Little Rock aforesaid being then and there a national banking association duly and legally created and organized and doing a banking business under and by virtue of the laws of the United States at the city of Little Rock, in the county of Pulaski and in the western division of the eastern district of Arkansas aforesaid, of which said First National Bank of Little Rock aforesaid he, the said Horace G. Allis, was then and there president; which said report in which said false entry was then and there made as aforesaid was a report of the First National Bank of Little Rock aforesaid in that behalf required to be made to the Comptroller of the Currency, to wit, a report of the condition of the First National Bank of Little Rock aforesaid on the said first day of March, 1892; which said false entry then and there made as aforesaid is as follows, to wit:

Under the head of—

Liabilities.	Dollars.	Cts.
"18. Bills payable".....		

Which said entry made as aforesaid in said report under the head of liabilities, dollars, cts., to wit, "18. Bills payable, ——," did in substance and effect declare and mean that on the 1st day of March, 1892, at the close of the business of the First National Bank of Little Rock aforesaid, the said First National Bank of Little Rock had no bills payable outstanding against it; and the grand jurors aforesaid upon their oaths aforesaid do further say and charge that said entry so made as aforesaid in the report aforesaid was then and there false in this, to wit, that on the close of business on the 1st day of March, 1892, the said First National Bank of Little Rock owed bills payable to the amount of forty-three thousand dollars and bills payable to that amount were then outstanding and unpaid against the First National Bank of Little Rock aforesaid, he, the said Horace G. Allis, then and there well knowing the said entry so made as aforesaid in the report aforesaid to be then and there false as aforesaid, and he, the said Horace G. Allis, did then and there knowingly, wilfully, and unlawfully make and cause to be made the said false entry in the report aforesaid with the intent then and there wilfully, wrongfully, and unlawfully to deceive any agent

be made to the Comptroller of the Currency, to wit, a report of the condition of the First National Bank of Little Rock aforesaid at the close of business on the 1st day of March, 1892, aforesaid; which said false entry then and there made as aforesaid is in words and figures as follows, to wit:

Under the head of—

Resources.	Dollars.	Cts.
"2. Overdrafts (see schedule)..	4,018	15"

Which said entry made as aforesaid in said report under the head of resources, dollars, cts., to wit, "2. Overdrafts (see schedule), 4,018.15," did in substance and effect declare that divers persons, firms, and corporations to the grand jurors unknown were then and there indebted to the First National Bank of Little Rock aforesaid in divers amounts to the grand jurors unknown, amounting in the aggregate to the sum of four thousand and eighteen dollars and fifteen cents, for money withdrawn from the First National Bank of Little Rock aforesaid by said persons, firms, and corporations and paid to said persons, firms, and corporations by the First National Bank of Little Rock aforesaid in excess of the aggregate sums and amounts said persons, firms, and corporations were entitled to withdraw and receive from said First National Bank of Little Rock aforesaid; and the jurors aforesaid do further say that the said entry so made as aforesaid was then and there false in this, to wit, that the aggregate sum and amount withdrawn from the First
14 National Bank of Little Rock aforesaid by said divers persons, firms, and corporations and received by said persons, firms, and corporations in excess of the aggregate sums and amounts which said persons, firms, and corporations were entitled to withdraw and receive from the First National Bank of Little Rock aforesaid and which should have been placed in said entry was much larger than the sum of four thousand and eighteen dollars and fifteen cents by many thousands of dollars, to wit, twenty-four thousand and fifty-one dollars and twenty cents, he, the said Horace G. Allis, then and there well knowing said entry in the report aforesaid to be then and there false as aforesaid, and the said Horace G. Allis did then and there make and cause to be made the said false entry in the aforesaid report with the intent then and there wilfully, wrongfully, and unlawfully to deceive any agent then or who might thereafter be appointed under title LXII of the Revised Statutes of the United States and the laws relating to national banking associations to examine the affairs of the First National Bank of Little Rock aforesaid and with the intent then and there wilfully, wrongfully, and unlawfully to deceive certain officers of the First National Bank of Little Rock aforesaid, the names of whom are to the grand jurors unknown, and with the intent then and there wilfully, wrongfully, and unlawfully to injure and defraud the First National Bank of Little Rock aforesaid and divers other corporations, firms, and persons, the names of said corporations, firms, and persons being to the grand jurors unknown, contrary to the form

of the statute in such case made and provided and against the peace and dignity of the United States of America.

15 Sixth count. Section 5209, Revised Statutes.

And the grand jurors aforesaid upon their oaths aforesaid do further present that the said Horace G. Allis, on the 7th day of March, A. D. 1892, in the county of Pulaski, in the western division of the eastern district of Arkansas and within the jurisdiction of the court, did then and there knowingly, wilfully, and unlawfully make a certain false entry in a certain report for the First National Bank of Little Rock, in the State of Arkansas, the First National Bank of Little Rock aforesaid being then and there a national banking association duly and legally organized, incorporated, and doing a banking business under and by virtue of the laws of the United States of America at the city of Little Rock, in the county of Pulaski and State of Arkansas and in the western division of the eastern district of Arkansas, of which said association the said Horace G. Allis was then and there the president and a director; which said report in which said false entry was then and there made as aforesaid was a report of said association in that behalf required by law to be made to the Comptroller of the Currency, to wit, a report of the condition of the First National Bank of Little Rock aforesaid at the close of business on the 1st day of March, 1892, and which said false entry then and there made as aforesaid is as follows, to wit:

Under the head of—

Resources.	Dollars.	Cts.
"1. Loans and discounts (see schedule).....	746,916	72"

Which entry so made as aforesaid in said report under the head of resources, dollars, cts., to wit, "1. Loans and discounts (see schedule), 746,916.72," did in substance and effect declare that the

16 First National Bank of Little Rock aforesaid had on hand at the close of the business on the said 1st day of March, 1892, divers promissory notes and bills of exchange made and executed by divers persons, firms, and corporations; which said promissory notes and bills of exchange were then and there unpaid and were of the aggregate sum and amount of seven hundred and forty-six thousand nine hundred sixteen dollars and seventy-two cents; which said promissory notes and bills of exchange had been duly and regularly discounted or purchased by the First National Bank of Little Rock aforesaid and of which the First National Bank of Little Rock aforesaid was then and there the true and lawful owner for value, and which said promissory notes and bills of exchange were then and there a resource of the said First National Bank of Little Rock aforesaid to the amount of seven hundred and forty-six thousand nine hundred sixteen dollars and seventy-two cents; and the grand jurors aforesaid upon their oaths aforesaid do further say and charge that said entry so made as aforesaid was then and there false in this, to wit, that the First National Bank of Little Rock aforesaid was not then and there the true and lawful owner and holder of unpaid promissory notes and bills of exchange which

were then and there a resource of said bank to the amount of seven hundred and forty-six thousand nine hundred sixteen dollars and seventy-two cents, and that the aggregate sum and amount of the promissory notes and bills of exchange held and owned by said First National Bank of Little Rock aforesaid at the close of the business on said 1st day of March, 1892, was many thousand dollars, to wit, twenty-thousand and thirty-three dollars and five cents, less than the amount stated in said false entry, he, the said Horace G. Allis, then and there
17 well knowing the said entry in the report aforesaid to be then and there false as aforesaid, and the said Horace G. Allis did then and there knowingly, wilfully, and unlawfully make and cause to be made the said false entry in the aforesaid report with the intent then and there wilfully, wrongfully, and unlawfully to deceive any agent then or who might thereafter be appointed under title LXII of the Revised Statutes of the United States and the acts of Congress amendatory thereto to examine the affairs of the First National Bank of Little Rock aforesaid and with the intent then and there wilfully, wrongfully, and unlawfully to deceive certain officers of the First National Bank of Little Rock aforesaid, the names of whom are to the grand jurors unknown, and with the intent then and there wilfully, wrongfully, and unlawfully to injure and defraud the First National Bank of Little Rock aforesaid and divers other corporations, persons, and firms, the names of said corporations, firms, and persons being to the grand jurors unknown, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Seventh count. Section 5209, Revised Statutes.

And the grand jurors aforesaid upon their oaths aforesaid do further present that the said Horace G. Allis, on the 7th day of March, A. D. 1892, in the county of Pulaski, in the State of Arkansas and in the western division of the eastern district of Arkansas and within the jurisdiction of the court, did then and there knowingly, wilfully, and unlawfully make a certain false entry in a cer-
18 tain report of the First National Bank of Little Rock, in the State of Arkansas, the First National Bank of Little Rock aforesaid being then and there a national banking association duly and legally created and organized and doing a banking business under and by virtue of the laws of the United States of America at the city of Little Rock, in the county of Pulaski and State of Arkansas and in the western division of the eastern district of Arkansas, of which said association the said Horace G. Allis was then and there the president; which said report in which said false entry was then and there made as aforesaid was a report of said association in that behalf required by law to be made to the Comptroller of the Currency, to wit, a report of the condition of the First National Bank of Little Rock aforesaid at the close of business on the 1st day of March, 1892, and which said false entry then and there made as aforesaid is as follows, to wit:

Under the head of—

Resources.	Dollars.	Cts.
"2. Overdrafts (see schedule).....	4,018	15"

Which entry so made as aforesaid in said report under the head of resources, dollars, cts., to wit, "2. Overdrafts (see schedule), 4,018.15," did in substance and effect declare that divers persons, firms, and corporations to the grand jurors unknown were then and there indebted to the First National Bank of Little Rock aforesaid on divers amounts to the grand jurors unknown, amounting in the aggregate to the sum of four thousand and eighteen dollars and fifteen cents, for money withdrawn from the First National Bank of Little Rock aforesaid by said persons, firms, and corporations and paid to said persons, firms, and corporations by said First National Bank of Little Rock aforesaid in excess of the aggregate sums
19 and amounts said persons, firms, and corporations were entitled to withdraw and receive from said First National Bank of Little Rock aforesaid; and the grand jurors aforesaid upon their oaths aforesaid do further say that the said entry so made as aforesaid was then and there false in this, to wit, that the aggregate sum and amount withdrawn from the First National Bank of Little Rock aforesaid by said divers persons, firms, and corporations and received by said persons, firms, and corporations in excess of the aggregate sums and amounts which said persons, firms, and corporations were entitled to withdraw and receive from said First National Bank of Little Rock aforesaid and which should have been placed in said entry was much larger than the sum of four thousand and eighteen dollars and fifteen cents by many thousand dollars, to wit, twenty-four thousand and fifty-one dollars and twenty cents, he, the said Horace G. Allis; then and there well knowing said entry in the report aforesaid to be then and there false as aforesaid, and the said Horace G. Allis did then and there make and cause to be made the said false entry in the aforesaid report with the intent then and there wilfully, wrongfully, and unlawfully to deceive any agent then or who might thereafter be appointed under title LXII of the Revised Statutes of the United States and the acts of Congress amendatory thereto to examine the affairs of the First National Bank of Little Rock aforesaid and with the intent then and there wilfully, wrongfully, and unlawfully to deceive certain officers of the First National Bank of Little Rock aforesaid, the names of whom are to the grand jurors unknown, and with the intent then and there wilfully, wrongfully, and unlawfully to injure and defraud the First National Bank of Little Rock aforesaid and divers other corporations, firms, and persons, the
20 names of said corporations, firms, and persons being to the grand jurors unknown, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Eighth count. Section 5209, Revised Statutes.

And the grand jurors aforesaid upon their oaths aforesaid do further present that the said Horace G. Allis, on the 18th day of

July, A. D. 1892, in the county of Pulaski, in the State of Arkansas, in the western division of the eastern district of Arkansas and within the jurisdiction of this court, did then and there knowingly, wilfully, and unlawfully make a certain report of the First National Bank of Little Rock in the State of Arkansas, the First National Bank of Little Rock aforesaid being then and there a national banking association duly and legally organized under and by virtue of the laws of the United States of America and doing a banking business at the city of Little Rock, in the county of Pulaski and State of Arkansas and in the western division of the eastern district of Arkansas, of which said First National Bank of Little Rock aforesaid the said Horace G. Allis was then and there the president; which said report in which said false entry was then and there made as aforesaid was a report of said association in that behalf required by law to be made to the Comptroller of the Currency, to wit, a report of the condition of the First National Bank of Little Rock aforesaid at the close of business on the 12th day of July, 1892, aforesaid, and which said false entry then and there made as aforesaid is in words and figures as follows, to wit:

Resources.	Dollars. Cts.
"2. Overdrafts (see schedule).....	5,136 80"

21 Which said entry made as aforesaid in said report under the head of resources, dollars, cts., to wit, "2. Overdrafts (see schedule), 5,136.80," did in substance and effect declare that divers persons, firms, and corporations to the grand jurors unknown were then and there indebted to the First National Bank of Little Rock aforesaid in divers amounts to the grand jurors unknown, amounting in the aggregate to the sum of five thousand one hundred and thirty-six dollars and eighty cents, for money withdrawn from the First National Bank of Little Rock aforesaid by said persons, firms, and corporations and paid to said persons, firms, and corporations by said bank in excess of the aggregate sums and amounts said persons, firms, and corporations were entitled to withdraw and receive from said First National Bank of Little Rock aforesaid; and the grand jurors aforesaid do further say that the said entry so made as aforesaid was then and there false in this, to wit, that the aggregate sum and amount withdrawn from the First National Bank of Little Rock aforesaid by said divers persons, firms, and corporations and received by said persons, firms, and corporations in excess of the aggregate sums and amounts which said persons, firms, and corporations were entitled to withdraw and receive from said First National Bank of Little Rock aforesaid and which should have been placed in said entry was much larger than the sum of five thousand one hundred and thirty-six dollars and eighty cents by many thousand of dollars, to wit, twenty-one thousand nine hundred and three dollars and seventy-eight cents, he, the said Horace G. Allis, then and there well knowing said entry in the report aforesaid to be then and there false as aforesaid, and the

22 said Horace G. Allis did then and there make and cause to be made the said false entry in the aforesaid report with the

intent then and there wilfully, wrongfully, and unlawfully to deceive any agent then or who might thereafter be appointed under title LXII. of the Revised Statutes of the United States and the acts of Congress amendatory thereto to examine the affairs of the First National Bank of Little Rock aforesaid and with the intent then and there wilfully, wrongfully, and unlawfully to deceive certain officers of the First National Bank of Little Rock aforesaid, the names of whom are to the grand jurors unknown, and with the intent then and there wilfully, wrongfully, and unlawfully to injure and defraud the First National Bank of Little Rock aforesaid and divers other corporations, firms, and persons, the names of said corporations, firms, and persons being to the grand jurors unknown, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Ninth count. Section 5209, Revised Statutes.

And the grand jurors aforesaid upon their oaths aforesaid do further present that the said Horace G. Allis, on the 18th day of July, A. D. 1892, in the county of Pulaski, in the western division of the eastern district of Arkansas and within the jurisdiction of this court, did then and there knowingly, wilfully, and unlawfully make a certain false entry in a certain report of the First National Bank of Little Rock, in the State of Arkansas, the First National Bank of Little Rock aforesaid being then and there a national banking association duly and legally created and organized under and by virtue of the laws of the United States and doing a
23 banking business at the city of Little Rock, in the county of Pulaski, State of Arkansas, and in the western division of the eastern district of Arkansas aforesaid, of which said association, to wit, the First National Bank of Little Rock, he, the said Horace G. Allis, was then and there the president; which said report in which said false entry was then and there made as aforesaid was a report of said First National Bank of Little Rock in that behalf required by law to be made to the Comptroller of the Currency, to wit, a report of the condition of the First National Bank of Little Rock aforesaid at the close of business on the 12th day of July, 1892, and which said false entry then and there made as aforesaid is as follows, to wit:

Under the head of—

Resources.	Dollars.	Cts.
"1. Loans and discounts (see schedule).....	308,236	07"

Which entry made as aforesaid in said report under the head of resources, dollars, cts., to wit, "1. Loans and discounts (see schedule), 808,236.07," did in substance and effect declare that the First National Bank of Little Rock aforesaid had on hand at the close of the business on the said 12th day of July, 1892, divers promissory notes and bills of exchange made and executed by divers persons, firms, and corporations; which said promissory notes and bills of exchange were then and there unpaid and were of the aggregate sum and amount of eight hundred and eight thousand two hundred thirty-six dollars and seven cents; which said promissory notes and

bills of exchange had been duly and regularly discounted and purchased by the First National Bank of Little Rock aforesaid and of which the First National Bank of Little Rock aforesaid was then and there the true and lawful owner for value, and which
24 said promissory notes and bills of exchange were then and there a resource of the said First National Bank of Little Rock aforesaid to the amount of eight hundred and eight thousand two hundred thirty-six dollars and seven cents; and the grand jurors aforesaid upon their oaths aforesaid do further say and charge that said entry so made as aforesaid was then and there false in this, to wit, that the First National Bank of Little Rock aforesaid was then and there the true and lawful owner and holder of unpaid promissory notes and bills of exchange which were then and there a resource of said First National Bank of Little Rock aforesaid to the amount of eight hundred and eight thousand two hundred thirty-six dollars and seven cents, and that the aggregate sum and amount of the promissory notes and bills of exchange held and owned by said First National Bank of Little Rock aforesaid at the close of the business on said 12th day of July, 1892, was many thousand dollars less, to wit, sixteen thousand seven hundred sixty-six dollars and ninety-eight cents less, than the amount stated in said false entry, he, the said Horace G. Allis, then and there well knowing the said entry made as aforesaid in the report aforesaid to be then and there false as aforesaid, and the said Horace G. Allis, president of the First National Bank of Little Rock aforesaid, did then and there knowingly, wilfully, and unlawfully make and cause to be made the said false entry in the aforesaid report, with the intent then and there wilfully, wrongfully, and unlawfully to deceive any agent then or who might thereafter be appointed under title LXII of the Revised Statutes of the United States and the acts of Congress amendatory thereto to examine the affairs of the First National Bank of Little Rock aforesaid and with the intent then and there wilfully, wrongfully, and unlawfully to deceive
25 certain officers of the First National Bank of Little Rock aforesaid, the names of whom are to the grand jurors unknown, and with the intent then and there wilfully — wrongfully to injure and defraud the First National Bank of Little Rock aforesaid and divers other corporations, firms, and persons, the names of said corporations, firms, and persons being to the grand jurors unknown, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Tenth count. Section 5209, Revised Statutes.

And the grand jurors aforesaid upon their oaths aforesaid do further present that the said Horace G. Allis, on the 1st day of March, A. D. 1892, in the county of Pulaski, in the State of Arkansas, in the western division of the eastern district of Arkansas and within the jurisdiction of this court, the said Horace G. Allis being then and there the president of a national banking association duly and legally created, organized, and incorporated under the banking laws of the United States, to wit, "The First National Bank of Little Rock," in the State of Arkansas and in the western division of the

eastern district of Arkansas aforesaid, and which said First National Bank of Little Rock aforesaid was then and there carrying on the business of banking, did, without the knowledge and consent of said First National Bank of Little Rock aforesaid and without the knowledge and authority and consent of the directors thereof, wilfully, knowingly, and unlawfully make and cause to be made in a book then and there belonging to and in use by the First National Bank of Little Rock aforesaid in the transaction of its bank-
26 ing business, designated and known as "Private Journal M 2," at page 124 therein, a certain false entry to the debit of the National Hide and Leather Bank of Boston, Massachusetts, in words and figures as follows, to wit, "Nat. Hide and Leather B'k, Boston, 50" (meaning thereby National Hide and Leather Bank of Boston, Massachusetts, fifty thousand dollars); which said entry made as aforesaid, to wit, "Nat. Hide and Leather B'k, Boston, 50" (meaning thereby National Hide and Leather Bank of Boston, Massachusetts, fifty thousand dollars, as aforesaid), did in substance and effect declare and mean and was intended to declare and mean that on the said 1st day of March, 1892, the National Hide and Leather Bank of Boston aforesaid held the sum of fifty thousand dollars subject to the order and draft of the First National Bank of Little Rock aforesaid, and that the First National Bank of Little Rock aforesaid had on deposit and to its credit with the National Hide and Leather Bank of Boston aforesaid the said sum of fifty thousand dollars; and the grand jurors aforesaid upon their oaths aforesaid do further say and charge that the said entry so made as aforesaid was false in this, to wit, that on the said 1st day of March, 1892, the National Hide and Leather Bank of Boston aforesaid did not hold the sum of fifty thousand dollars subject to the order and draft of the First National Bank of Little Rock aforesaid, and that the First National Bank of Little Rock aforesaid did not have on deposit and to its credit with the National Hide and Leather Bank of Boston aforesaid the said sum of fifty thousand dollars, he, the said Horace G. Allis, then and there well knowing that said entry so made as aforesaid in the book aforesaid was false as aforesaid, with the intent then and there upon the
27 part of him, the said Horace G. Allis, to wilfully, wrongfully, and unlawfully deceive any agent then or who might thereafter be appointed under title LXII of the Revised Statutes of the United States and the acts of Congress amendatory thereto to examine the affairs of the First National Bank of Little Rock aforesaid and with the intent then and there to wilfully, wrongfully, and unlawfully deceive certain officers of the First National Bank of Little Rock aforesaid, the names of whom are to the grand jurors unknown, and with the intent then and there to wilfully, wrongfully, and unlawfully injure and defraud the First National Bank of Little Rock aforesaid and divers other persons, corporations, and firms, the names of said corporations, persons, and firms being to the grand jurors unknown, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

28 Eleventh count. Section 5209, Revised Statutes.

And the grand jurors aforesaid upon their oaths aforesaid do further present that the said Horace G. Allis, on the 13th day of February, A. D. 1892, in the county of Pulaski, State of Arkansas, and in the western division of the eastern district of Arkansas, within the jurisdiction of this court, the said Horace G. Allis being then and there the president of a national banking association created and organized under the banking laws of the United States, to wit, the First National Bank of Little Rock, in Pulaski county, Arkansas, and in the western division of the eastern district of Arkansas aforesaid, and which said First National Bank of Little Rock aforesaid was then and there carrying on the business of banking, did then and there, without the knowledge, authority, and consent of said First National Bank of Little Rock and without the knowledge and consent of the directors thereof, wilfully, knowingly, and unlawfully make and cause to be made in a book then and there belonging to and in use by the said First National Bank of Little Rock aforesaid in the transaction of its banking business and designated and known as Private Journal M 2, at page 21 therein, a certain false entry to the credit of the Continental National Bank of Memphis, Tennessee, in words and figures as follows, to wit, "M. L. & T. Co., 15" (meaning thereby Continental National Bank of Memphis, Tennessee, and Massachusetts Loan and Trust Company of Boston, Massachusetts, fifteen thousand dollars); which said entry made as aforesaid, to wit, "M. L. & T. Co., 15" (meaning thereby Continental National Bank of Memphis, Tennessee, and Massachusetts Loan and Trust Company of Boston, Massachusetts, fifteen thousand dollars, as aforesaid), did in substance and

29 effect declare and mean and was intended to declare and mean that the First National Bank of Little Rock aforesaid, on the 13th day of February, 1892, had on deposit and to its credit with the Continental National Bank of Memphis, Tennessee, aforesaid fifteen thousand dollars and the said sum of fifteen thousand dollars was on that date withdrawn by the First National Bank of Little Rock aforesaid from the Continental National Bank of Memphis, Tennessee, aforesaid.

30 And the grand jurors aforesaid upon their oaths aforesaid do further say and charge that the said entry so made as aforesaid on the book aforesaid was false in this, to wit, that the First National Bank of Little Rock aforesaid, on the 13th day of February, 1892, did not have on deposit and to its credit with the Continental National Bank of Memphis, Tennessee, aforesaid fifteen thousand dollars and the said sum of fifteen thousand dollars was not on that date withdrawn by the First National Bank of Little Rock aforesaid from the Continental National Bank of Memphis, Tennessee, aforesaid, he, the said Horace G. Allis, then and there well knowing that said entry so made as aforesaid in the book aforesaid was false as aforesaid, with the intent then and there upon the part of him, the said Horace G. Allis, to wilfully, wrongfully, and unlawfully deceive any agent then or who might thereafter be appointed under title LXII of the Revised Statutes of the United States

and the acts of Congress amendatory thereto to examine the affairs of the First National Bank of Little Rock aforesaid and with the intent then and there to wilfully, wrongfully, and unlawfully deceive certain officers of the First National Bank of Little Rock aforesaid, the names of whom are to the grand jurors unknown, and with the intent then and there to wilfully, wrongfully, and unlawfully injure and defraud the First National Bank of Little Rock aforesaid and divers other persons, firms, and corporations, the names of said persons, firms, and corporations being to the grand jurors unknown, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

31 Twelfth count. Section 5209, Revised Statutes.

And the grand jurors aforesaid upon their oaths aforesaid do further present that the said Horace G. Allis, on the 13th day of February, A. D. 1892, in the county of Pulaski, State of Arkansas, and in the western division of the eastern district of Arkansas, within the jurisdiction of this court, he, the said Horace G. Allis, being then and there the president of a national banking association created and organized under the banking laws of the United States, to wit, the First National Bank of Little Rock, in Pulaski county, Arkansas, and in the western division of the eastern district of Arkansas aforesaid, and which said First National Bank of Little Rock aforesaid was then and there carrying on the business of banking, did then and there, without the knowledge, authority, and consent of said First National Bank of Little Rock and without the knowledge and consent of the directors thereof, wilfully, knowingly, and unlawfully make and cause to be made in a certain book then and there belonging to and in use by the said First National Bank of Little Rock aforesaid in the transaction of its banking business and designated and known as Private Journal M 2, at page 91 therein, a certain false entry to the credit of the Continental National Bank of St. Louis, Missouri, in words and figures as follows, to wit, "Continental Nat. B'k St. L., M. L. & T. Co., 15" (meaning thereby Continental National Bank of St. Louis, Missouri, and Massachusetts Loan and Trust Company of Boston, Massachusetts, $15, fifteen thousand dollars), which said entry so made in said book as aforesaid, to wit, "Continental Nat. B'k St. L., M. L. & T. Co., 15" (meaning thereby Continental National Bank of St. Louis, Missouri, and

32 Massachusetts Loan and Trust Company, fifteen thousand dollars, as aforesaid), did in substance and effect declare and mean and was intended to declare and mean that on said 13th day of February, 1892, the First National Bank of Little Rock aforesaid had to and for its credit with the Continental National Bank of St. Louis, Missouri, aforesaid the sum of fifteen thousand dollars and on that date the said sum of fifteen thousand dollars was withdrawn by the First National Bank of Little Rock aforesaid from the Continental National Bank of St. Louis aforesaid.

33 And the grand jurors aforesaid upon their oaths aforesaid do further say and charge that the said entry so made as aforesaid on the book aforesaid was false in this, to wit, that the First

National Bank of Little Rock aforesaid did not have to and for its credit with the Continental National Bank of St. Louis, Missouri, aforesaid fifteen thousand dollars and the said sum of fifteen thousand dollars was not on that date withdrawn by the First National Bank of Little Rock aforesaid from the Continental National Bank of St. Louis, Missouri, aforesaid, he, the said Horace G. Allis, then and there well knowing that said entry so made as aforesaid in the book aforesaid was false as aforesaid, with the intent then and there upon the part of him, the said Horace G. Allis, to wilfully, wrongfully, and unlawfully deceive any agent then or who might thereafter be appointed under title LXII of the Revised Statutes of the United States and the acts of Congress amendatory thereto to examine the affairs of the First National Bank of Little Rock aforesaid and with the intent then and there to wilfully, wrongfully, and unlawfully deceive certain officers of the First National Bank of Little Rock aforesaid, the names of whom are to the grand jurors unknown, and with the intent then and there to wilfully, wrongfully, and unlawfully injure and defraud the First National Bank of Little Rock aforesaid and divers other persons, firms, and corporations, the names of said persons, firms, and corporations being to the grand jurors unknown, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

34 Thirteenth count. Section 5209, Revised Statutes.

And the grand jurors aforesaid upon their oaths aforesaid do further present that the said Horace G. Allis, on the 3d day of February, A. D. 1892, in the county of Pulaski, State of Arkansas, and in the western division of the eastern district of Arkansas, within the jurisdiction of this court, the said Horace G. Allis being then and there the president of a national banking association duly and legally created and organized under the banking laws of the United States, to wit, the First National Bank of Little Rock, in Pulaski county, Arkansas, and in the western division of the eastern district of Arkansas aforesaid, and which said First National Bank of Little Rock aforesaid was then and there carrying on the business of banking, did then and there, without the knowledge, authority, and consent of said First National Bank of Little Rock and without the knowledge and consent of the directors thereof, wilfully, knowingly, and unlawfully make and cause to be made in a book then and there belonging to and in use by the said First National Bank of Little Rock aforesaid in the transaction of its banking business and designated and known as Private Journal M 2, at page 70 therein, a certain false entry to the credit of the Fourth National Bank of New York, in the State of New York, in words and figures as follows, to wit:

"Fourth Nat. Bank N. Y., M. L. & Co., 5" (meaning thereby Fourth National Bank of New York and Massachusetts Loan and Trust Company of Boston, Massachusetts, five thousand dollars); which said entry made as aforesaid, to wit, "Fourth Nat. Bank N. Y., M. L. & Co., 5" (meaning thereby Fourth National Bank of New York, in the city of New York, and Massachusetts

Loan and Trust Company of Boston Massachusetts, five
35 thousand dollars as aforesaid) did in substance and effect declare and mean and was intended to declare and mean that on said third day of February, 1892, the First National Bank of Little Rock aforesaid had on deposit and to its credit at and with the said Massachusetts Loan and Trust Company of Boston aforesaid the sum of five thousand dollars, and on that date, to wit, the third day of February, 1892, the said sum of five thousand dollars was transferred by the Massachusetts Loan and Trust Company of Boston aforesaid to the Fourth National Bank of New York aforesaid for deposit and credit to and for the First National Bank of Little Rock aforesaid, and that the Fourth National Bank of New York aforesaid then held said sum of five thousand dollars to and for the credit of the First National Bank of Little Rock aforesaid; and the grand jurors aforesaid upon their oaths aforesaid do further say and charge that the said entry made as aforesaid was false in this, to wit, that the First National Bank of Little Rock aforesaid on the date aforesaid did not have on deposit and to its credit at and with the Massachusetts Loan and Trust Company of Boston aforesaid the said sum of five thousand dollars and on the said date the said sum of five thousand dollars was not transferred by the Massachusetts Loan and Trust Company of Boston aforesaid to the Fourth National Bank of New York aforesaid for deposit and credit to and for the First National Bank of Little Rock aforesaid and on said date the Fourth National Bank of New York aforesaid did not hold said sum of five thousand dollars to and for the credit of
36 the First National Bank of Little Rock aforesaid, he, the said Horace G. Allis, then and there well knowing that said entry so made as aforesaid in the book aforesaid was false as aforesaid, with the intent then and there upon the part of him, the said Horace G. Allis, to wilfully, wrongfully, and unlawfully deceive any agent then or who might thereafter be appointed under title LXII of the Revised Statutes of the United States and the acts of Congress amendatory thereto to examine the affairs of the First National Bank of Little Rock aforesaid and with the intent then and there to wilfully, wrongfully, and unlawfully deceive certain officers of the First National Bank of Little Rock aforesaid, the names of whom are to the grand jurors unknown, and with the intent then and there to wilfully, wrongfully, and unlawfully injure and defraud the First National Bank of Little Rock aforesaid and divers other persons, firms, and corporations, the names of said persons, firms, and corporations being to the grand jurors unknown, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

37 14th count. Section 5209, Revised Statutes.

And the grand jurors aforesaid upon their oaths aforesaid do further present that the said Horace G. Allis, on the 22d day of February, A. D. 1892, in the county of Pulaski, State of Arkansas, and in the western division of the eastern district of Arkansas, within the jurisdiction of this court, the said Horace G. Allis being then and there the president of a national banking association duly

and legally created and organized under the banking laws of the United States, to wit, the First National Bank of Little Rock, in Pulaski county, Arkansas, and in the western division of the eastern district of Arkansas aforesaid, and which said First National Bank of Little Rock aforesaid was then and there carrying on the business of banking, did then and there, without the knowledge, authority, and consent of said First National Bank of Little Rock and without the knowledge and consent of the directors thereof, wilfully, knowingly, and unlawfully make and cause to be made in a book then and there belonging to and in use by the said First National Bank of Little Rock aforesaid in the transaction of its banking business and designated and known as "Individual Ledger T, from A to K," at page 2, for the month of February, a certain false entry to the credit of him, the said Horace G. Allis, in words and figures as follows, to wit, under the head of deposits, "50,000" (meaning thereby fifty thousand dollars); which said entry so made as aforesaid in the book aforesaid, to wit, "50,000" (meaning thereby fifty thousand dollars as aforesaid), did in substance and effect declare and mean and was intended to declare and mean that the said Horace
38 G. Allis, on that date, to wit, the 22nd day of February, 1892, had deposited with the First National Bank of Little Rock aforesaid the said sum of fifty thousand dollars, and that there was on that date the said sum of fifty thousand dollars on deposit with the First National Bank of Little Rock aforesaid, by reason of said entry, subject to the order and check of him, the said Horace G. Allis; and the grand jurors aforesaid upon their oaths aforesaid further say that said entry so made as aforesaid in the book aforesaid was false in this, to wit, that on the 22nd day of February, 1892, the said Horace G. Allis had not deposited with the First National Bank of Little Rock aforesaid the said sum of fifty thousand dollars and on that date there was not the sum of fifty thousand dollars on deposit with the said First National Bank of Little Rock aforesaid, by reason of said entry, subject to the order and check of the said Horace G. Allis; and the grand jurors aforesaid upon their oaths aforesaid do further say and charge that the said Horace G. Allis
39 then and there well *knowing* that said entry so made as aforesaid in the book aforesaid was false as aforesaid, with the intent then and there upon the part of him, the said Horace G. Allis, to wilfully, wrongfully, and unlawfully deceive any agent then or who might thereafter be appointed under title LXII of the Revised Statutes of the United States and the acts of Congress amendatory thereto to examine the affairs of the First National Bank of Little Rock aforesaid and with the intent then and there to wilfully, wrongfully, and unlawfully deceive certain officers of the First National Bank of Little Rock aforesaid, the names of whom are to the grand jurors unknown, and with the intent then and there to wilfully, wrongfully, and unlawfully injure and defraud the First National Bank of Little Rock aforesaid and divers other persons, firms, and corporations, the names of said persons, firms, and corporations being to the grand jurors unknown, contrary to the form

of the statute in such case made and provided and against the peace and dignity of the United States of America.

40 15th count. Section 5209, Revised Statutes.

And the grand jurors aforesaid upon their oaths aforesaid do further present that the said Horace G. Allis, on the 22nd day of February, A. D. 1892, in the county of Pulaski, in the State of Arkansas and in the western division of the eastern district of Arkansas and within the jurisdiction of this court, the said Horace G. Allis being then and there the president of a national banking association duly and legally created and organized under the banking laws of the United States, to wit, the First National Bank of Little Rock, in the State of Arkansas and in the western division of the eastern district of Arkansas, and which said First National Bank of Little Rock aforesaid was then and there carrying on the business of banking as aforesaid, did, without the knowledge, authority, and consent of the First National Bank of Little Rock and without the knowledge and consent of the directors thereof, wilfully, knowingly, and unlawfully make and cause to be made in a book then and there belonging to and in use by the said First National Bank of Little Rock aforesaid in the transaction of its banking business and designated and known as "Private Ledger M," at page 856, a certain false entry to the debit of the First National Bank of New York in the words and figures as follows, to wit, "Feb. 22, dep. by H. G. A. (Coffin), 25,000" (meaning thereby February 22nd, 1892, deposited by H. G. Allis twenty-five thousand dollars); which said entry made as aforesaid, to wit, "Feb. 22, dep. by H. G. A. (Coffin), 25,000" (meaning thereby February 22nd, 1892, deposited by H. G. Allis twenty-five thousand dollars as aforesaid), did in substance and effect declare and mean and was intended to declare and mean that on said date, to wit,

41 the 22nd day of February, 1892, twenty-five thousand dollars was charged to the account of the First National Bank of New York, in the State of New York, and that the account of H. G. Allis was credited with the said sum of twenty-five thousand dollars, and that said sum of twenty-five thousand dollars was entitled to and should be charged to the account of the First National Bank of New York, and that the account of Horace G. Allis aforesaid with the First National Bank of Little Rock aforesaid was entitled to and should receive a credit of twenty-five thousand dollars; and the grand jurors aforesaid upon their oaths aforesaid do further say and charge that the said entry so made as aforesaid was false in this, to wit, that on that date, to wit, the 22nd day of February, 1892, the said Horace G. Allis had not deposited the said sum of twenty-five thousand dollars with the First National Bank of New York to the credit of the First National Bank of Little Rock aforesaid; the said sum of twenty-five thousand dollars was not entitled to and should not have been charged to the account of the First National Bank of New York aforesaid, and that on that date the account of Horace G. Allis with the First National Bank of Little Rock aforesaid was not entitled to and should not have received a credit of twenty-

five thousand dollars, he, the said Horace G. Allis, then
42 and there well knowing that said entry so made as aforesaid in the book aforesaid was false as aforesaid, with the intent then and there upon the part of him, the said Horace G. Allis, to wilfully, wrongfully, and unlawfully deceive any agent then or who might thereafter be appointed under title LXII of the Revised Statutes of the United States and the acts of Congress amendatory thereto to examine the affairs of the First National Bank of Little Rock aforesaid and with the intent then and there to wilfully, wrongfully, and unlawfully deceive certain officers of the First National Bank of Little Rock aforesaid, the names of whom are to the grand jurors unknown, and with the intent then and there to wilfully, wrongfully, and unlawfully injure and defraud the First National Bank of Little Rock aforesaid, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

43 16th count. Section 5209, Revised Statutes.

And the grand jurors aforesaid upon their oaths aforesaid do further present that the said Horace G. Allis, on the 3d day of February, A. D. 1892, in the county of Pulaski, in the State of Arkansas and in the western division of the eastern district of Arkansas and within the jurisdiction of this court, the said Horace G. Allis being then and there the president of a national banking association duly and legally created and organized under the banking laws of the United States, to wit, the First National Bank of Little Rock, in the State of Arkansas and in the western division of the eastern district of Arkansas, and which said First National Bank of Little Rock aforesaid was then and there carrying on the business of banking as aforesaid, did, without the knowledge, authority, and consent of the First National Bank of Little Rock and without the knowledge and consent of the directors thereof, wilfully, knowingly, and unlawfully make and cause to be made in a book then and there belonging to and in use by the said First National Bank of Little Rock aforesaid in the transaction of its banking business and designated and known as "Private Journal M 2," at page 71, a certain false entry to the credit of the Massachusetts Loan and Trust Company of Boston, Massachusetts, in words and figures as follows, to wit:

"Mass. Loan & T. Co., First N. B'k Chicago..... 15
Fourth Nt. B'k N. Y..... 5
Cont'l, Memphis..... 15"

(Meaning thereby Massachusetts Loan and Trust Company of Boston, Massachusetts, and First National Bank of Chicago, Illinois, fifteen thousand dollars, and the Fourth National Bank
44 of New York, in the State of New York, five thousand dollars, and the Continental National Bank of Memphis, in the State of Tennessee, fifteen thousand dollars), which said entry made as aforesaid, to wit:

" Mass. Loan & T. Co., First N. B'k Chicago..... 15
Fourth Nat. B'k N. Y 5
Cont'l, Memphis..... 15"

(Meaning thereby Massachusetts Loan & Trust Company of Boston, Massachusetts, and First National Bank of Chicago, Illinois, fifteen thousand dollars, and the Fourth National Bank of New York, in the State of New York, five thousand dollars, and the Continental National Bank of Memphis, in the State of Tennessee, fifteen thousand dollars as aforesaid), did in substance and effect declare and mean and was intended to declare and mean that on the said 3rd day of February, 1892, the First National Bank of Little Rock aforesaid had to and for its credit with the Massachusetts Loan and Trust Company of Boston aforesaid the sum of thirty-five thousand dollars, and that on that date the sum of fifteen thousand dollars was placed to and for the credit of the First National Bank of Little Rock aforesaid with the First National Bank of Chicago aforesaid, and that on that date the sum of five thousand dollars was placed to and for the credit of the First National Bank of Little Rock aforesaid with the Fourth National Bank of New York aforesaid, and that on that date the sum of fifteen thousand dollars was placed to and for the credit of the First National Bank of Little Rock aforesaid with the Continental National Bank of Memphis aforesaid; and the grand jurors aforesaid upon their oaths aforesaid do further say
45 and charge that the said entry so made as aforesaid in the book aforesaid was false in this, to wit, the First National Bank of Little Rock aforesaid, on the date aforesaid, to wit, the 3rd day of February, 1892, did not have to and for its credit with the Massachusetts Loan and Trust Company of Boston aforesaid the sum of thirty-five thousand dollars, and that on that date the sum of fifteen thousand dollars was not placed to and for the credit of the First National Bank of Little Rock aforesaid with the First National Bank of Chicago aforesaid and on that date the sum of five thousand dollars was not placed to and for the credit of the First National Bank of Little Rock aforesaid with the Fourth National Bank of New York aforesaid and on that date the sum of fifteen thousand dollars was not placed to and for the credit of the First National Bank of Little Rock aforesaid with the Continental National Bank of Mem-
46 phis aforesaid, he, the said Horace G. Allis, then and there well knowing that said entry so made as aforesaid in the book aforesaid was false as aforesaid, with the intent then and there upon the part of him, the said Horace G. Allis, to wilfully, wrongfully, and unlawfully deceive any agent then or who might thereafter be appointed under title LXII of the Revised Statutes of the United States and the acts of Congress amendatory thereto to examine the affairs of the First National Bank of Little Rock aforesaid and with the intent then and there to wilfully, wrongfully, and unlawfully deceive certain officers of the First National Bank of Little Rock aforesaid, the names of whom are to the grand jurors unknown, and with the intent then and there to wilfully, wrongfully, and unlawfully injure

and defraud the First National Bank of Little Rock aforesaid, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

47 17th count. Section 5209, Revised Statutes.

And the grand jurors aforesaid upon their oaths aforesaid do further present that the said Horace G. Allis, on the 1st day of March, A. D. 1892, in the county of Pulaski, in the State of Arkansas and in the western division of the eastern district of Arkansas and within the jurisdiction of this court, the said Horace G. Allis being then and there the president of a national banking association duly and legally created and organized under the banking laws of the United States, to wit, the First National Bank of Little Rock, in the State of Arkansas and in the western division of the eastern district of Arkansas, and which said First National Bank of Little Rock aforesaid was then and there carrying on the business of banking as aforesaid, did, without the knowledge, authority, and consent of the First National Bank of Little Rock and without the knowledge and consent of the directors thereof, wilfully, knowingly, and unlawfully make and cause to be made in a book then and there belonging to and in use by the said First National Bank of Little Rock aforesaid in the transaction of its banking business and designated and known as "Private Journal M 2," at page 125 thereof, a certain false entry to the credit of the National Hide and Leather Bank of Boston, Massachusetts, in words and figures as follows, to wit, "Nat. Hide and Leather b'k, Am. Nat. B'k K. C., 15; Nat. B'k of Com., 28" (meaning thereby National Hide and Leather Bank of Boston, Massachusetts, and American National Bank of Kansas City, Missouri, fifteen thousand dollars, and National Bank of Commerce in St. Louis, Missouri, twenty-eight thousand dollars); which

48 said entry made as aforesaid in the book aforesaid, to wit, "Nat. Hide and Leather b'k, Am. Nat. — K. C., 15; Nat. B'k of Com., 28" (meaning thereby the National Hide and Leather Bank of Boston, Massachusetts, and American National Bank of Kansas City, Missouri, fifteen thousand dollars, and National Bank of Commerce in St. Louis, Missouri, twenty-eight thousand dollars, as aforesaid), did in substance and effect declare and mean and was intended to declare and mean that the First National Bank of Little Rock aforesaid had withdrawn fifteen thousand dollars from the National Hide and Leather Bank of Boston aforesaid and transferred said amount to the account of the American National Bank of Kansas City aforesaid, and that the First National Bank of Little Rock had withdrawn twenty-eight thousand dollars from the National Hide and Leather Bank of Boston aforesaid and transferred said amount to the account of the National Bank of Commerce in St. Louis aforesaid; and the grand jurors aforesaid upon their oaths aforesaid do further say and charge that the said entry so made as aforesaid in the book aforesaid was false in this, to wit, the First National Bank of Little Rock aforesaid had not withdrawn fifteen thousand dollars from the National Hide and Leather Bank of Boston aforesaid and transferred said amount to the account of the American National Bank of Kansas City afore-

said and the First National Bank of Little Rock aforesaid had not withdrawn twenty-eight thousand dollars from the National Hide and Leather Bank of Boston aforesaid and had not transferred said amount to the account of the National Bank of Commerce in
49 St. Louis aforesaid, he, the said Horace G. Allis, then and there well knowing that said entry so made as aforesaid in the book aforesaid was false as aforesaid, with the intent then and there upon the part of him, the said Horace G. Allis, to wilfully, wrongfully, and unlawfully deceive any agent then or who might thereafter be appointed under title LXII of the Revised Statutes of the United States and the acts of Congress amendatory thereto to examine the affairs of the First National Bank of Little Rock aforesaid and with the intent then and there to wilfully, wrongfully, and unlawfully deceive certain officers of the First National Bank of Little Rock aforesaid, the names of whom are to the grand jurors unknown, and with the intent then and there to wilfully, wrongfully, and unlawfully injure and defraud the First National Bank of Little Rock aforesaid, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

50 18th count. Section 5209, Revised Statutes.

And the grand jurors aforesaid upon their oaths aforesaid do further present that the said Horace G. Allis, on the 22nd day of February, A. D. 1892, in the county of Pulaski, in the State of Arkansas and in the western division of the eastern district of Arkansas and within the jurisdiction of this court, the said Horace G. Allis being then and there the president of a national banking association duly and legally created and organized under the banking laws of the United States, to wit, the First National Bank of Little Rock, in the State of Arkansas and in the western division of the eastern district of Arkansas, and which said First National Bank of Little Rock aforesaid was then and there carrying on the business of banking as aforesaid, did, without the knowledge, authority, and consent of the First National Bank of Little Rock and without the knowledge and consent of the directors thereof, wilfully, knowingly, and unlawfully make and cause to be made in a book then and there belonging to and in use by the said First National Bank of Little Rock aforesaid in the transaction of its banking business and designated and known as Private Journal M 2, at page 124 therein, a certain false entry to the debit of bills payable in words and figures as follows, to wit, "bills payable, 43" (meaning thereby bills payable, forty-three thousand dollars); which said entry made as aforesaid, to wit, "bills payable, 43" (meaning thereby bills payable, forty-three thousand dollars, as aforesaid), did in substance and effect declare and mean and was intended to declare and mean that on said 1st day of March, 1892, *that* all the bills payable which had been outstanding against the First National Bank of Little Rock aforesaid had been paid; and the grand
51 jurors aforesaid upon their oaths aforesaid do further say and charge that the said entry so made as aforesaid in the book aforesaid was false in this, to wit, that on said date,

to wit, the 1st day of March, 1892, the First National Bank of Little Rock aforesaid had bills payable against it outstanding and unpaid to the amount of forty-three thousand dollars,
52 he, the said Horace G. Allis, then and there well knowing that said entry so made as aforesaid in the book aforesaid was false as aforesaid, with the intent then and there upon the part of him, the said Horace G. Allis, to wilfully, wrongfully, and unlawfully deceive any agent then or who might thereafter be appointed under title LXII of the Revised Statutes of the United States and the acts of Congress amendatory thereto to examine the affairs of the First National Bank of Little Rock aforesaid and with the intent then and there to wilfully, wrongfully, and unlawfully deceive certain officers of the First National Bank of Little Rock aforesaid, the names of whom are to the grand jurors unknown, and with the intent then and there to wilfully, wrongfully, and unlawfully injure and defraud the First National Bank of Little Rock aforesaid, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

53 19th count. Section 5209, Revised Statutes.

And the grand jurors aforesaid upon their oaths aforesaid do further present that the said Horace G. Allis, on the 3d day of February, A. D. 1892, in the county of Pulaski, in the State of Arkansas, in the western division of the eastern district of Arkansas and within the jurisdiction of this court, the said Horace G. Allis being then and there the president of a national banking association duly and legally created and organized under the banking laws of the United States, to wit, the First National Bank of Little Rock, in Pulaski county, in the State of Arkansas and in the western division of the eastern district of Arkansas aforesaid, and which said National Bank of Little Rock aforesaid was then and there carrying on the business of banking, did, without the knowledge, authority, and consent of the First National Bank of Little Rock aforesaid and without the knowledge and consent of the directors thereof, wilfully, knowingly, and unlawfully make and cause to be made in a certain book then and there belonging to and in use by the First National Bank of Little Rock aforesaid in the transaction of its banking business and designated and known as "Private Journal M 2," at page 70 thereon, a certain false entry to the debit of the Continental National Bank of Memphis, in the State of Tennessee, in words and figures as follows, to wit, "Memphis, Mass. L. & — Co., 15" (meaning thereby Continental National Bank of Memphis, Tennessee, and Massahusetts Loan and Trust Company of Boston, Massachusetts, $15,000); which said entry made as aforesaid, to wit, "Memphis, Mass. L. & — Co.,
15" (meaning thereby Continental National Bank of Memphis,
54 Tennessee, and Massachusetts Loan and Trust Company of Boston, Massachusetts, $15,000, as aforesaid), did in substance and effect declare and mean and was intended to declare and mean that on said third day of February, 1892, the First National Bank of Little Rock aforesaid had on deposit to its credit at and with the said Massachusetts Loan and Trust Company of Boston aforesaid

the sum of fifteen thousand dollars, and on that date, to wit, the third day of February, 1892, the said sum of fifteen thousand dollars was transferred by the Massachusetts Loan and Trust Company of Boston aforesaid to the Continental National Bank of Memphis, Tennessee, aforesaid for deposit and credit to and for the First National Bank of Little Rock aforesaid, and that the Continental National Bank of Memphis aforesaid then held said sum of fifteen thousand dollars to and for the credit of the First National Bank of Little Rock aforesaid; and the grand jurors aforesaid upon their oaths aforesaid do further say and charge that the said entry so made as aforesaid was false in this, to wit, that the First National Bank of Little Rock aforesaid on the date aforesaid did not have on deposit and to its credit at and with the Massachusetts Loan and Trust Company of Boston aforesaid the said sum of fifteen thousand dollars and on the said date the said sum of fifteen thousand dollars was not transferred by the Massachusetts Loan and Trust Company of Boston aforesaid to the Continental National Bank of Memphis, Tennessee, aforesaid for deposit and credit to and for the First National Bank of Little Rock aforesaid, and on said date the Continental National Bank of Memphis, Tennessee, aforesaid did not hold said sum of fifteen thousand dollars to and for the credit of the First National Bank of Little Rock aforesaid, he, the
55 said Horace G. Allis, then and there well knowing that said entry so made as aforesaid in the book aforesaid was false as aforesaid, with the intent then and there upon the part of him, the said Horace G. Allis, to wilfully, wrongfully, and unlawfully deceive any agent then or who might thereafter be appointed under title LXII of the Revised Statutes of the United States and the acts of Congress amendatory thereto to examine the affairs of the First National Bank of Little Rock aforesaid and with the intent then and there to wilfully, wrongfully, and unlawfully deceive certain officers of the First National Bank of Little Rock aforesaid, the names of whom are to the grand jurors unknown, and with the intent then and there to wilfully, wrongfully, and unlawfully injure and defraud the First National Bank of Little Rock aforesaid and divers other persons, corporations, and firms, the names of said persons, corporations, and firms being to the grand jurors unknown, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

56 Twentieth count. Section 5209, Revised Statutes.

And the grand jurors aforesaid upon their oaths aforesaid do further present that the said Horace G. Allis, on the 13th day of February, A. D. 1892, in the county of Pulaski, in the State of Arkansas, in the western division of the eastern district of Arkansas and within the jurisdiction of this court, the said Horace G. Allis being then and there the president of a national banking association duly and legally created and organized under the banking laws of the United States, to wit, the First National Bank of Little Rock, in Pulaski county, in the State of Arkansas and in the western division of the eastern district of Arkansas aforesaid, and which said National Bank of Little Rock aforesaid was then and there carrying on the

business of banking, did, without the knowledge, authority, and consent of the First National Bank of Little Rock aforesaid and without the knowledge and consent of the directors thereof, wilfully, knowingly, and unlawfully make and cause to be made in a certain book then and there belonging to and in use by the First National Bank of Little Rock aforesaid in the transaction of its banking business and designated and known as Private Journal M 2, at page 91 therein, a certain false entry to the credit of the Fourth National Bank of New York, in the State of New York, in words and figures as follows, to wit, "N. Y., M. L. & T. Co., 5" (meaning thereby the Fourth National Bank of New York, in the State of New York, and Massachusetts Loan and Trust Company of Boston, Massachusetts, five thousand dollars); which said entry made as aforesaid on the book aforesaid, to wit, "N. Y., M. L. & — Co., 5" (meaning thereby
57 the Fourth National Bank of New York, in the State of New York, and Massachusetts Loan and Trust Company of Boston, Massachusetts, five thousand dollars, as aforesaid), did in substance and effect declare and mean and was intended to declare and mean that on the said thirteenth day of February, 1892, the First National Bank of Little Rock aforesaid had to and for its credit the said sum of five thousand dollars at and with the Fourth National Bank of New York aforesaid and the First National Bank of Little Rock aforesaid had on that day withdrawn said sum of five thousand dollars from the Fourth National Bank of New York aforesaid; and the grand jurors aforesaid upon their oaths aforesaid do further say and charge that the said entry so made as aforesaid in the book as aforesaid was false in this, to wit, that on said thirteenth day of February, 1892, the First National Bank of Little Rock aforesaid did not have to and for its credit the said sum of five thousand dollars at and with the Fourth National Bank of New York aforesaid and the First National Bank of Little Rock aforesaid on that day had not withdrawn said sum of five thousand dollars from the Fourth National Bank of New York aforesaid,
58 he, the said Horace G. Allis, then and there well knowing that said entry so made as aforesaid in the book aforesaid was false as aforesaid, with the intent then and there upon the part of him, the said Horace G. Allis, to wilfully, wrongfully, and unlawfully deceive any agent then or who might thereafter be appointed under title LXII of the Revised Statutes of the United States and the acts of Congress amendatory thereto to examine the affairs of the First National Bank of Little Rock aforesaid and with the intent then and there to wilfully, wrongfully, and unlawfully deceive certain officers of the First National Bank of Little Rock aforesaid, the names of whom are to the grand jurors unknown, and with the intent then and there to wilfully, wrongfully, and unlawfully injure and defraud the First National Bank of Little Rock aforesaid and divers other persons, corporations, and firms, the names of said persons, corporations, and firms being to the grand jurors unknown, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

59 21st count. Section 5209, Revised Statutes.

And the grand jurors aforesaid upon their oaths aforesaid do further present that the said Horace G. Allis, on the 13th day of February, A. D. 1892, in the county of Pulaski, in the State of Arkansas, in the western division of the eastern district of Arkansas and within the jurisdiction of this court, the said Horace G. Allis being then and there the president of a national banking association duly and legally created and organized under the banking laws of the United States, to wit, the First National Bank of Little Rock, in Pulaski county, in the State of Arkansas and in the western division of the eastern district of Arkansas aforesaid, and which said National Bank of Little Rock aforesaid was then and there carrying on the business of banking, did, without the knowledge, authority, and consent of the First National Bank of Little Rock aforesaid and without the knowledge and consent of the directors thereof, wilfully, knowingly, and unlawfully make and cause to be made in a certain book then and there belonging to and in use by the First National Bank of Little Rock aforesaid in the transaction of its banking business and designated and known as Private Journal M 2, at page 91 thereof, a certain false entry to the credit of the First National Bank of Chicago, in the State of Illinois, in words and figures as follows, to wit, "Chicago, M. L. & T. Co., 15,000" (meaning thereby First National Bank of Chicago, in the State of Illinois, and Massachusetts Loan and Trust Company of Boston, Massachusetts, fifteen thousand dollars); which said entry made as aforesaid in the books aforesaid, to wit, "Chicago, M. L. & T. Co., 15,000" (meaning thereby the First National Bank of Chicago, in the State
60 of Illinois, and Massachusetts Loan and Trust Company of Boston, Massachusetts, fifteen thousand dollars, as aforesaid), did in substance and effect declare and mean and was intended to declare and mean that on the said thirteenth day of February, 1892, the First National Bank of Little Rock aforesaid had on deposit and to its credit at and with the First National Bank of Chicago the sum of fifteen thousand dollars, and that on that date the First National Bank of Little Rock aforesaid had withdrawn said sum of fifteen thousand dollars from the First National Bank of Chicago aforesaid; and the grand jurors aforesaid upon their oaths aforesaid do further say and charge that the said entry so made as aforesaid in the book aforesaid was false in this, to wit, that the First National Bank of Little Rock aforesaid on the said thirteenth day of February, 1892, did not have on deposit and to its credit at and with the First National Bank of Chicago aforesaid the sum of fifteen thousand dollars, and that on that date the First National Bank of Little Rock aforesaid had not withdrawn said sum of fifteen thousand dollars from the First National Bank of Chicago aforesaid,
61 he, the said Horace G. Allis, then and there well knowing that said entry so made as aforesaid in the book aforesaid was false as aforesaid, with the intent then and there upon the part of him, the said Horace G. Allis, to wilfully, wrongfully, and unlawfully deceive any agent then or who might thereafter be appointed under title LXII of the Revised Statutes of the United States and the

acts of Congress amendatory thereto to examine the affairs of the First National Bank of Little Rock aforesaid and with the intent then and there to wilfully, wrongfully, and unlawfully deceive certain officers of the First National Bank of Little Rock aforesaid, the names of whom are to the grand jurors unknown, and with the intent then and there to wilfully, wrongfully, and unlawfully injure and defraud the First National Bank of Little Rock aforesaid and divers other persons, corporations, and firms, the names of said persons, corporations, and firms being to the grand jurors unknown, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

62 22nd count. Section 5209, Revised Statutes.

And the grand jurors aforesaid upon their oaths aforesaid do further present that the said Horace G. Allis, on the 13th day of February, A. D. 1892, in the county of Pulaski, in the State of Arkansas, in the western division of the eastern district of Arkansas and within the jurisdiction of this court, the said Horace G. Allis being then and there the president of a national banking association duly and legally created and organized under the banking laws of the United States, to wit, the First National Bank of Little Rock, in Pulaski county, in the State of Arkansas and in the western division of the eastern district of Arkansas aforesaid, and which said National Bank of Little Rock aforesaid was then and there carrying on the business of banking, did, without the knowledge, authority, and consent of the First National Bank of Little Rock aforesaid and without the knowledge and consent of the directors thereof, wilfully, knowingly, and unlawfully make and cause to be made in a certain book then and there belonging to and in use by the First National Bank of Little Rock aforesaid in the transaction of its banking business and designated and known as "Private Journal M 2," at page 91, a certain false entry to the credit of the Continental National Bank of Memphis, in the State of Tennessee, in words and figures as follows, to wit, "Memphis, M. L. & T. Co., 15,000" (meaning thereby Continental National Bank of Memphis, in the State of Tennessee, and Massachusetts Loan and Trust Company of Boston, Massachusetts, fifteen thousand dollars:) which said entry made as aforesaid in the book aforesaid, to wit, "Memphis, M. L. & T. Co., 15,000;" (meaning thereby Continental National Bank

63 of Memphis, in the State of Tennessee, and Massachusetts Loan and Trust Company of Boston, Massachusetts, fifteen thousand dollars, as aforesaid), did in substance and effect declare and mean and was intended to declare and mean that the First National Bank of Little Rock aforesaid had in its possession the sum of fifteen thousand dollars belonging to the Continental National Bank of Memphis aforesaid subject to its order; and the grand jurors aforesaid upon their oaths aforesaid further say and charge that the said entry so made as aforesaid in the book aforesaid was false in this, to wit, that the First National Bank of Little Rock aforesaid on the thirteenth day of February,

1892, aforesaid did not have in its possession the said sum of fifteen thousand dollars nor any part thereof belonging to the Continental National Bank of Memphis aforesaid and subject to the order of said Continental National Bank of Memphis
64 aforesaid, he, the said Horace G. Allis, then and there well knowing that said entry so made as aforesaid in the book aforesaid was false as aforesaid, with the intent then and there upon the part of him, the said Horace G. Allis, to wilfully, wrongfully, and unlawfully deceive any agent then or who might thereafter be appointed under title LXII of the Revised Statutes of the United States and the acts of Congress amendatory thereto to examine the affairs of the First National Bank of Little Rock aforesaid and with the intent then and there to wilfully, wrongfully, and unlawfully deceive certain officers of the First National Bank of Little Rock aforesaid, the names of whom are to the grand jurors unknown, and with the intent then and there to wilfully, wrongfully, and unlawfully injure and defraud the First National Bank of Little Rock aforesaid and divers other persons, corporations, and firms, the names of said persons, corporations, and firms being to the grand jurors unknown, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

65 23rd count. Section 5209, Revised Statutes.

And the grand jurors aforesaid upon their oaths aforesaid do further present that the said Horace G. Allis, on the 13th day of February, A. D. 1892, in the county of Pulaski, in the State of Arkansas and in the western division of the eastern district of Arkansas and within the jurisdiction of this court, the said Horace G. Allis being then and there the president of a national banking association duly and legally created and organized under the banking laws of the United States, to wit, the First National Bank of Little Rock, in the State of Arkansas and in the western division of the ea-tern district of Arkansas, and which said First National Bank of Little Rock was then and there carrying on the business of banking as aforesaid, did, without the knowledge, authority, and consent of the First National Bank of Little Rock and without the knowledge, authority, and consent of the directors thereof, wilfully, knowingly, and unlawfully make and cause to be made in a book then and there belonging to and in use by the said First National Bank of Little Rock aforesaid in the transaction of its banking business and designated and known as "Private Journal M 2," at page 92, a certain false entry to the debit of the Southern National Bank of New York, in the State of New York, in words and figures as follows, to wit, "So Nat. Bank, N. York, H. G. A., 30" (meaning thereby Southern National Bank of New York, in the State of New York, H. G. Allis, thirty thousand dollars); which said entry made as aforesaid in the book aforesaid, to wit, "So. Nat. Bank N. York, H. G. A., 30" (meaning thereby Southern National Bank of New York, H. G. Allis, thirty thousand dollars, as aforesaid), did
66 in substance and effect declare and mean and was intended to declare and mean that on the said thirteenth day of Feb-

ruary, 1892, the First National Bank of Little Rock aforesaid had on deposit and to its credit at and with the Southern National Bank of New York aforesaid the sum of thirty thousand dollars; and the grand jurors aforesaid upon their oaths aforesaid do further say and charge that said entry so made as aforesaid in the book aforesaid was false in this, to wit, that on said date, to wit, the thirteenth day of February, 1892, the First National Bank of Little Rock aforesaid did not have on deposit and to its credit at and with the Southern National Bank of New York aforesaid the said
67 sum of thirty thousand dollars, he, the said Horace G. Allis, then and there well knowing that said entry so made as aforesaid in the book aforesaid was false as aforesaid, with the intent then and there upon the part of him, the said Horace G. Allis, to wilfully, wrongfully, and unlawfuliy deceive any agent then or who might thereafter be appointed under title LXII of the Revised Statutes of the United States and the acts of Congress amendatory thereto to examine the affairs of the First National Bank of Little Rock aforesaid and with the intent then and there wilfully, wrongfully, and unlawfully to deceive certain officers of the First National Bank of Little Rock aforesaid, the names of whom are to the grand jurors unknown, and with the intent then and there to wilfully, wrongfully, and unlawfully injure and defraud the First National Bank of Little Rock aforesaid and divers other persons, firms, and corporations, the names of said firms, persons, and corporations being to the grand jurors unknown, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

68 24th count. Section 5209, Revised Statutes.

And the grand jurors aforesaid upon their oaths aforesaid do further present that the said Horace G. Allis, on the 13th day of February, A. D. 1892, in the county of Pulaski, in the State of Arkansas and in the western division of the eastern district of Arkansas and within the jurisdiction of this court, the said Horace G. Allis being then and there the president of a national banking association duly and legally created and organized under the banking laws of the United States, to wit, the First National Bank of Little Rock, in the State of Arkansas and in the western division of the eastern district of Arkansas, and which said First National Bank of Little Rock was then and there carrying on the business of banking as aforesaid, did, without the knowledge, authority, and consent of the First National Bank of Little Rock and without the knowledge, authority, and consent of the directors thereof, wilfully, knowingly, and unlawfully make and cause to be made in a book then and there belonging to and in use by the said First National Bank of Little Rock aforesaid in the transaction of its banking business and designated and known as "Private Journal M 2," at page 91, a certain false entry to the credit of the Fourth National Bank of New York, in the State of New York, in words and figures as follows, to wit, "N. Y. L. & T. Co., 5,000" (meaning thereby the Fourth National Bank of New York, in the State of New York, and Massachusetts Loan and Trust Company of Boston, Massachusetts, $5,000);

which said entry made as aforesaid in the book aforesaid, to wit, "N. Y. L. & T. Co., $5,000" (meaning thereby the Fourth National Bank of New York, in the State of New York, and Massachusetts
69 Loan and Trust Company of Boston, Massachusetts, $5,000, as aforesaid), did in substance and effect declare and mean that on said thirteenth day of February, 1892, the First National Bank of Little Rock aforesaid had in its possession the sum of five thousand dollars belonging to the said Fourth National Bank of New York, in the State of New York, and subject to the order and check of the Fourth National Bank of New York aforesaid; further say and charge that the entry so made as aforesaid in the book aforesaid was false in this, to wit, the First National Bank of Little Rock aforesaid did not have in its possession the sum of five thousand dollars belonging to the Fourth National Bank of New York aforesaid, subject to the order and check of the Fourth Na-
70 tional Bank of New York aforesaid, he, the said Horace G. Allis, then and there well knowing that said entry so made as aforesaid in the book aforesaid was false as aforesaid, with the intent then and there upon the part of him, the said Horace G. Allis, to wilfully, wrongfully, and unlawfully deceive any agent then or who might thereafter be appointed under title LXII of the Revised Statutes of the United States and the acts of Congress amendatory thereto to examine the affairs of the First National Bank of Little Rock aforesaid and with the intent then and there wilfully, wrongfully, and unlawfully to deceive certain officers of the First National Bank of Little Rock aforesaid, the names of whom are to the grand jurors unknown, and with the intent then and there to wilfully, wrongfully, and unlawfully injure and defraud the First National Bank of Little Rock aforesaid and divers other persons, firms, and corporations, the names of said firms, persons, and corporations being to the grand jurors unknown, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

71 25th count. Section 5209, Revised Statutes.

And the grand jurors aforesaid upon their oaths aforesaid do further present that the said Horace G. Allis, on the 3d day of February, A. D. 1892, in the county of Pulaski, in the State of Arkansas and in the western division of the eastern district of Arkansas and within the jurisdiction of this court, the said Horace G. Allis being then and there the president of a national banking association duly and legally created and organized under the banking laws of the United States, to wit, the First National Bank of Little Rock, in the State of Arkansas and in the western division of the eastern district of Arkansas, and which said First National Bank of Little Rock was then and there carrying on the business of banking as aforesaid, did, without the knowledge, authority, and consent of the First National Bank of Little Rock and without the knowledge, authority, and consent of the directors thereof, wilfully, knowingly, and unlawfully make and cause to be made in a book then and there belonging to and in use by the said First National

Bank of Little Rock aforesaid in the transaction of its banking business and designated and known as Private Journal M 2, at page 70 therein, a certain false entry to the debit of the First National Bank of Chicago, in the State of Illinois, in words and figures as follows, to wit, "Chicago, M. L. & Co., 15" (meaning thereby the First National Bank of Chicago, in the State of Illinois, and Massachusetts Loan and Trust Company of Boston, Massachusetts, fifteen thousand dollars); which said entry made as aforesaid, to wit, "Chicago, M. L. & Co., 15" (meaning thereby First National Bank of Chicago, in the State of Illinois, and Massachusetts
72 Loan and Trust Company of Boston, Massachusetts, fifteen thousand dollars, as aforesaid), did in substance and effect declare and mean and was intended to declare and mean that on said third day of February, 1892, the First National Bank of Little Rock aforesaid had on deposit and to its credit at and with the Massachusetts Loan and Trust Company of Boston aforesaid the sum of fifteen thousand dollars and on that date the Massachusetts Loan and Trust Company of Boston aforesaid had transferred the said sum of fifteen thousand dollars to the First National Bank of Chicago aforesaid for deposit and credit to and for the First National Bank of Little Rock aforesaid, and that on that date the First National Bank of Chicago aforesaid held to and for the credit of the First National Bank of Little Rock aforesaid the said sum of fifteen thousand dollars; and the grand jurors aforesaid upon their oaths aforesaid do further say and charge that the said entry so made aforesaid was false in this, to wit, that the First National Bank of Little Rock aforesaid did not have on deposit and to its credit at and with the Massachusetts Loan and Trust Company of Boston aforesaid the sum of fifteen thousand dollars, and that on that date the Massachusetts Loan and Trust Company of Boston aforesaid had not transferred the said sum of fifteen thousand dollars to the First National Bank of Chicago aforesaid for deposit and credit to and for the First National Bank of Little Rock aforesaid, and that on that date the First National Bank of Chicago aforesaid did not hold to and for the credit of the First National Bank of Little Rock aforesaid the said sum of fifteen thousand dollars, he,
73 the said Horace G. Allis, then and there well knowing that said entry so made as aforesaid in the book aforesaid was false as aforesaid, with the intent then and there upon the part of him, the said Horace G. Allis, to wilfully, wrongfully, and unlawfully deceive any agent then or who might thereafter be appointed under title LXII of the Revised Statutes of the United States and the acts of Congress amendatory thereto to examine the affairs of the First National Bank of Little Rock aforesaid, and with the intent then and there wilfully, wrongfully, and unlawfully to deceive certain officers of the First National Bank of Little Rock aforesaid, the names of whom are to the grand jurors unknown, and with the intent then and there to wilfully, wrongfully, and unlawfully injure and defraud the First National Bank of Little Rock aforesaid and divers other persons, firms, and corporations, the names of said firms, persons, and corporations being to the grand jurors unknown,

contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

JOSEPH W. HOUSE,
U. S. District Attorney.

Returned in open court in presence of the grand jury and filed of record May 13th, 1893.

RALPH L. GOODRICH, *Clerk.*

74 UNITED STATES OF AMERICA, }
Western Division of the Eastern District of Arkansas. }

Be it remembered that at a circuit court of the United States of America in and for the western division of the eastern district of Arkansas, begun and holden on Monday, the 23rd day of October, anno Domini one thousand eight hundred and ninety-three, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable Walter H. Sanborn, circuit judge, presiding and holding said court, the following proceedings were had, to wit, on November 27th, 1893, as follows:

UNITED STATES
v.
HORACE G. ALLIS. } Violation of Section 5209, R. S. U. S.

Comes the United States, by Joseph W. House, Esqr., district attorney, and J. H. Harrod, Esqr., and comes the defendant to the bar of the court, in answer to his recognizance and by Martin and Murphy and John A. Johnson, Esqrs., his attorneys, and having had hearing of the said indictment, and being demanded concerning the premises how he will acquit himself thereof, he saith that he is not guilty thereof, and thereof for good and evil he puts himself upon the country, and Joseph W. House, Esqr., district attorney, who for the United States in this behalf prosecutes, doth the like, and in presence of the defendant the court proceeds to empannel a jury; and thereupon a jury came, to wit, U. S. Bratton, Perry Nettle, Jesse Martin, Jackson Sandridge, T. D. Hawkins, C. C. Brown, C. R. Anderson, G. J. Cullum, Sr., L. C. O'Barr, Clen. Watkins, H. M. Bush, and George W. Porter, being twelve
75 good and lawful men of the district, who were duly tried, empannelled, and sworn well and truly to try and a true deliverance make between the United States and the defendant and a true verdict give according to the law and the evidence; and thereupon the jury proceed to hear the evidence as well on the part of the United States as of the defendant; and the trial hereof not being concluded the same is continued until tomorrow morning.

76 On November 28th, 1893, as follows:

UNITED STATES
v.
HORACE G. ALLIS. } Violation of Sec. 5209, R. S. of U. S.

Comes the United States, by Joseph W. House, Esqr., district attorney, and J. H. Harrod, Esqr., and comes the defendant to the bar of the court, in answer to his recognizance and by Martin and Murphy and John A. Johnson, Esqrs., his attorneys, and come the jury, to wit, U. S. Bratton, Perry Nettle, Jesse Martin, Jackson Sandridge, T. D. Hawkins, C. C. Brown, C. R. Anderson, G. J. Cullom, Sr., L. C. O'Barr, Clen. Watkins, H. M. Bush, and George W. Porter, and the trial hereof not being concluded on yesterday the same is now resumed; and the trial hereof not being concluded the same is continued until tomorrow morning.

77 On November 29, 1893, as follows:

UNITED STATES
v.
HORACE G. ALLIS. } Violation of Sec. 5209, R. S. of U. S.

Comes the United States, by Joseph W. House, Esqr., district attorney, and J. H. Harrod, Esqr., and comes the defendant to the bar of the court, in answer to his recognizance and by Martin and Murphy and John A. Johnson, Esqrs., his attorneys, and come the jury, to wit, U. S. Bratton, Perry Nettle, Jesse Martin, Jackson Sandridge, T. D. Hawkins, C. C. Brown, C. R. Anderson, G. J. Cullom, Sr., L. C. O'Barr, Clen. Watkins, H. M. Bush, and George W. Porter, and the trial hereof not being concluded on yesterday the same is now resumed; and the trial hereof not being concluded the same is continued until tomorrow morning.

78 On December 1st, 1893, as follows:

UNITED STATES
v.
HORACE G. ALLIS. } Violation of Sec. 5209, R. S. of U. S.

Comes the United States, by Joseph W. House, Esqr., district attorney, and J. H. Harrod, Esqr., and comes the defendant to the bar of the court, in answer to his recognizance and by Martin and Murphy and John A. Johnson, Esqrs., his attorneys, and come the jury, to wit, U. S. Bratton, Perry Nettle, Jesse Martin, Jackson Sandridge, T. D. Hawkins, C. C. Brown, C. R. Anderson, G. J. Cullom, Sr., L. C. O'Barr, Clen. Watkins, H. M. Bush, and George W. Porter, and the trial hereof not being concluded on yesterday the same is now resumed; and the trial hereof not being concluded the same is continued until tomorrow morning.

79 On December 2d, 1893, as follows:

UNITED STATES
v.
HORACE G. ALLIS. } Violation of Sec. 5209, R. S. of U. S.

Comes the United States, by Joseph W. House, Esqr., district attorney, and J. H. Harrod, Esqr., and comes the defendant to the bar of the court, in answer to his recognizance and by Martin and Murphy and John A. Johnson, Esqrs., his attorneys, and come the jury, to wit, U. S. Bratton, Perry Nettle, Jesse Martin, Jackson Sandridge, T. D. Hawkins, C. C. Brown, C. R. Anderson, G. J. Cullom, Sr., L. C. O'Barr, Clen. Watkins, H. M. Bush, and George W. Porter, and the trial hereof not being concluded on yesterday the same is now resumed; and the trial hereof not being concluded the same is continued until Monday morning.

80 On December 4, 1893, as follows:

UNITED STATES
v.
HORACE G. ALLIS. } Violation Sec. 5209, R. S. U. S.

Comes the United States, by Joseph W. House, Esqr., district attorney, and J. H. Harrod, Esqr., and comes the defendant to the bar of the court, in answer to his recognizance and by Martin and Murphy and John A. Johnson, Esqrs., his attorneys, and come the jury, to wit, U. S. Bratton, Perry Nettle, Jesse Martin, Jackson Sandridge, T. D. Hawkins, C. C. Brown, C. R. Anderson, G. J. Cullom, Sr., L. C. O'Barr, Clen. Watkins, H. M. Bush, and George W. Porter, and the trial hereof not being concluded on Saturday the same is now resumed; and the trial hereof not being concluded the same is continued until tomorrow morning.

81 On December 5, 1893, as follows:

UNITED STATES
v.
HORACE G. ALLIS. } Violation Sec. 5209, R. S. U. S.

Comes the United States, by Joseph W. House, Esqr., district attorney, and J. H. Harrod, Esqr., and comes the defendant to the bar of the court, in answer to his recognizance and by Martin and Murphy and John A. Johnson, Esqrs., his attorneys, and come the jury, to wit, U. S. Bratton, Perry Nettle, Jesse Martin, Jackson Sandridge, T. D. Hawkins, C. C. Brown, C. R. Anderson, G. J. Cullom, Sr., L. C. O'Barr, Clen. Watkins, H. M. Bush, and George W. Porter, and the trial hereof not being concluded on yesterday the same is now resumed; and the trial hereof not being concluded the same is continued until tomorrow morning.

82 On December 6, 1893, as follows:

UNITED STATES
v.
HORACE G. ALLIS. } Violation Sec. 5209, R. S. U. S.

Comes the United States, by Joseph W. House, Esqr., district attorney, and J. H. Harrod, Esqr., and comes the defendant to the bar of the court, in answer to his recognizance and by Martin and Murphy and John A. Johnson, Esqrs., his attorneys, and come the jury, to wit, U. S. Bratton, Perry Nettle, Jesse Martin, Jackson Sandridge, T. D. Hawkins, C. C. Brown, C. R. Anderson, G. J. Cullom, Sr., L. C. O'Barr, Clen. Watkins, H. M. Bush, and George W. Porter, and the trial hereof not being concluded on yesterday the same is now resumed; and the trial hereof not being concluded the same is continued until tomorrow morning.

83 On December 7, 1893, as follows:

UNITED STATES
v.
HORACE G. ALLIS. } Violation Sec. 5209, R. S. U. S.

Comes the United States, by Joseph W. House, Esqr., district attorney, and J. H. Harrod, Esqr., and comes the defendant to the bar of the court, in answer to his recognizance and by Martin and Murphy and John A. Johnson, Esqrs., his attorneys, and come the jury, to wit, U. S. Bratton, Perry Nettle, Jesse Martin, Jackson Sandridge, T. D. Hawkins, C. C. Brown, C. R. Anderson, G. J. Cullom, Sr., L. C. O'Barr, Clen. Watkins, H. M. Bush, and George W. Porter, and the trial hereof not being concluded on yesterday the same is now resumed; and the trial hereof not being concluded the same is continued until tomorrow morning.

84 On December 8, 1893, as follows:

UNITED STATES
v.
HORACE G. ALLIS. } Violation Sec. 5209, R. S. U. S.

Comes the United States, by Joseph W. House, Esqr., district attorney, and J. H. Harrod, Esqr., and comes the defendant to the bar of the court, in answer to his recognizance and by Martin and Murphy and John A. Johnson, Esqrs., his attorneys, and come the jury, to wit, U. S. Bratton, Perry Nettle, Jesse Martin, Jackson Sandridge, T. D. Hawkins, C. C. Brown, C. R. Anderson, G. J. Cullom, Sr., L. C. O'Barr, Clen. Watkins, H. M. Bush, and George W. Porter, and the trial hereof not being concluded on yesterday the same is now resumed, and the jury, having heard all the evidence, as well on the part of the United States as of the defendant, and argument of counsel, and having been charged and instructed by the court, retired to consult of their verdict; and, by consent of Martin and Murphy and John A. Johnson, Esqrs., attorneys for the defendant,

it is ordered that the jury be permitted to take with them into the jury-room the indictment in this case.

And on December 9, 1893, as follows:

UNITED STATES
v.
HORACE G. ALLIS. } Violation Sec. 5209, R. S. U. S.

Comes the United States, by Joseph W. House, Esqr., dis-
85 trict attorney, and J. H. Harrod, Esqr., and comes the defendant to the bar of the court, in answer to his recognizance and by Martin and Murphy and John A. Johnson, Esqrs., his attorneys, and come the jury, to wit, U. S. Bratton, Perry Nettle, Jesse Martin, Jackson Sandridge, T. D. Hawkins, C. C. Brown, C. R. Anderson, G. J. Cullom, Sr., L. C. O'Barr, Clen. Watkins, H. M. Bush, and George W. Porter, and return into court the following verdict:

We, the jury, find the defendant guilty as charged in the indictment in count No. 14.

L. C. O'BARR, *Foreman.*

And, on motion of Martin and Murphy and John A. Johnson, Esqrs., attorneys for defendant, the jury was thereupon polled by order of the court, and, being severally enquired of, each answered that this was his verdict.

On December 11, 1893, as follows:

UNITED STATES
v.
HORACE G. ALLIS. } Violation Sec. 5209, R. S. U. S.

Comes the defendant, by Martin and Murphy and John A. Johnson, Esqrs., his attorneys, and in his own proper person, and files herein his motion for a new trial, and comes the United States, by Joseph W. House, Esqr., district attorney, and J. H. Harrod, Esq., and said motion is heard, argued, and submitted to the court, and the court, being now well and sufficiently advised in the premises, considers that said motion be overruled.

And comes the said defendant to the bar of the court in custody of the marshal and by his said attorneys, and, being now
86 enquired of by the court if he have aught to say, and saying nothing further than he hath already said, why the judgment and sentence of the court should not now be pronounced upon him upon the verdict and finding of the jury in this case, finding him guilty as charged in the 14th count of the indictment, and the court being now well advised in the premises, it is therefore considered, ordered, adjudged, and sentenced that said defendant, Horace G. Allis, be imprisoned for and during the term of five (5) years in the Kings county penitentiary at Brooklyn, New York, and that the marshal of this district convey the said prisoner to the penitentiary aforesaid and deliver him to the custody of the keeper

thereof, and that the clerk of this court make out for said marshal two copies of this judgment and sentence, duly certified under the seal of this court, one of which the said marshal shall deliver to the keeper of said penitentiary and the other return and file in this court, with the receipt of said keeper thereon.

On motion of Martin and Murphy and John A. Johnson, Esqrs., attorneys for the defendant, it is ordered that in case a writ of error be sued out and allowed the amount of defendant's bail be fixed at the sum of twenty thousand dollars, to be approved by the court.

(Record signed.)

WALTER H. SANBORN.

87 On December 27th, 1893, as follows, to wit:

Before Honorable Henry C. Caldwell, circuit judge.

UNITED STATES
v.
HORACE G. ALLIS.

Comes the defendant, by Martin and Murphy, Esqrs., his attorneys, and presents his application for writ of error and citation, and also assignment of errors; and said writ of error having been granted and issued and the citation served, and the defendant being admitted to bail in the sum of twenty thousand dollars pending said writ of error, which bail he has given and has been approved—

It is ordered that he be enlarged and released from custody of the marshal until the further order of the court.

Which application for writ of error is as follows:

United States Circuit Court, Western Division of the Eastern District of Arkansas.

UNITED STATES
v.
HORACE G. ALLIS.

The defendant, Horace G. Allis, states that he is aggrieved by the judgment and proceedings against him in this case; that in
88 the same there are, as he is advised, many errors, of which he files herewith an assignment.

He therefore prays a writ of error, to the end that the record in this cause may be transferred into the Supreme Court of the United States and said errors redressed.

MARTIN AND MURPHY,
Attorneys for Horace G. Allis.

Filed December 27, 1893.

RALPH L. GOODRICH, *Clerk.*

Which assignment of errors is as follows:

In the Circuit Court of the United States for the Western Division of the Eastern District of Arkansas.

Comes Horace G. Allis and files herein the following assignments of error:

W. J. Hays, a witness on the part of the United States, after testifying to his familiarity with the system of book-keeping of national banks, his recent examination of the books of the First National Bank of Little Rock, Arkansas, and the sum of money due said bank, as shown by said books, on account of overdrafts at the close of business on the first day of March and the twelfth day of July, 1892, the only dates respecting which the defendant Allis was charged with making false entries as to overdrafts, was asked by the attorneys for the United States this question:

Have you examined the books in reference to Mr. Allis's individual account and are you able to state how it stood during the period of time covered by the counts of the indictment here?
89 If so, state how his account stood in the matter of overdrafts to the bank from the 1st day of February, 1892, to the 10th day of December, 1892.

To this question the defendant Allis objected for irrelevancy and incompetency; but the court overruled the objection, and the defendant Allis then and there excepted. In this ruling the court erred; the objection should have been sustained.

2. The court, against the objection of Allis, permitted the witness Hays to answer said question, which he did in substance as follows: His account with the bank was overdrawn on the 2nd of February $30,159.59; on the 8th of February $91,000.00; on the 1st of March $57.23; on the 19th of March $13,272.50; on the 31st of March $30,000.00; on the 18th of April $8,658.44; on the 21st of April $1,705.04; on May 10th $1,111.32; on May 31st $23,110.57; on 6th and 7th of July $10,000.00; on the 9th of July $14,000.00; on the 10th, 11th, and 12th of July $5,000.00; on the 20th of July $209.78; on the 31st of July $7,160.29; on the 19th of November $23,408.14; on the 6th of December $38,090.82. His highest overdraft was in February, 1892, amounting to $92,130.65. The court erred in receiving this evidence; it was irrelevant and incompetent and should have been rejected.

3. Yost, another witness on the part of the United States, testified in chief that he was general book-keeper of the First National Bank of Little Rock, Arkansas, and that on February 3rd he entered on the books of the bank a charge of $5,000.00 against the Fourth National Bank of New York; a charge of $15,000.00 against the First National Bank of Chicago, Illinois; a charge of $15,000.00 against the Continental National Bank of Memphis, Tennessee, on charge tickets signed by W. C Denny, the cashier of said First National Bank of Little Rock, and a credit to the Massachusetts Loan and Trust Company of $35,000.00 on a credit slip written by him;
90 also that on the 22nd of February, 1892, he entered on the books of the bank a credit of ~~$5,000.00~~ $50,000.00 to defendant Allis

on a credit slip written by said Denny and a charge of $25,000.00 each against the First National Bank of New York and the Southern National Bank of New York on charge and credit slips written by said Denny; that he made out the reports to the Comptroller of the Currency of the condition of the bank at the close of business on the 1st of March and 9th of December, 1892, respectively, in accordance with the books, and delivered the latter to Allis, and that when Allis returned it for copying in ink it had been changed so as to show $100,000.00 of bills and notes rediscounted less than the books showed and $100,000.00 more of individual deposits subject to check; that he, by direction of Allis, changed the March report and also the books to make them correspond with it. After testifying further, on cross-examination, that he made out all the reports except the one for June, 1891, and that he made out the report next preceding the 9th of December report—for September 15th—which was signed and sworn to by said Denny when Allis was absent from the State, this witness was asked by defendant Allis's attorneys this cross-question:

"Mr. Yost, I will ask you if that September report made out by you and signed and sworn to by Denny did not contain the identical change of $100,000.00 from the items of bills and notes rediscounted to individual deposits subject to check that is *compl*ained here in the December report."

To this cross-question the attorneys for the United States excepted for irrelevance and incompetency. The court sustained the objection and refused to permit the cross-question to be answered, and the defendant Allis then and there excepted.

In this ruling and decision the court erred. The cross question was legitimate and should have been answered.

91 4. W. C. Denny, cashier, who testified to the entries of February 3rd and February 22nd, 1892, saying that Allis, before he left the State, about the 25th of January, 1892, told him to have the entries of February 3rd made, and that he did so, carrying them in his memory until they were made, and that on the 20th of February, 1892, he received from New York a cypher telegram in Allis's name, which he at once took into the back room and translated, under which he had the credit to Allis of $50,000.00 and the charges of $25,000.00 each to the Southern and First National Banks of New York made on the 22nd of February. The telegram was then offered in evidence, but the defendant Allis objected for irrelevance and incompetency; but the court overruled the objection and permitted the telegram to be received in evidence. It was as follows:

FEBRUARY 22.

W. C. Denny, Little Rock, Ark.:

Credit Allis fifty thousand, charging twenty-five thousand each to First National Bank of New York and twenty-five thousand to Southern National Bank of New York. Don't draw this balance until Tuesday, to allow Coffin to negotiate. Holiday Monday. St. Louis Southern Sunday and Monday; thence Illinois. Tell wife.

In this ruling the court erred. The testimony should have been rejected.

5. After the jury had been charged the court recalled them and charged them further, using, among other language, in its charge the following:

It appears from the evidence that on February 20th Mr. Allis had drawn out of the bank $42,180.65 more than he had deposited in it. There is a telegram in evidence which, if it was sent
92 by him and is correct, directed the cashier of the Little Rock bank to charge the First National Bank of New York $25,000.00, the Southern National Bank of New York $25,000.00, and to credit his account $50,000.00. The officers of those banks testify that Mr. Allis never deposited either of these sums with them. No witness says that he did, and if you believe their testimony these entries are false. You have the telegram in evidence, and Mr. Denny testifies that it was received by him in cypher. The defendant Allis received through it a false credit of just $50,000.00, and, if he caused the entries to be made, with what intent did he do so?

In giving this part of the charge the court erred, and the defendant Allis then and there excepted to same on the ground that it was unwarranted by the evidence and because it gave undue prominence to the evidence of Denny respecting the telegram and the entries of February 22nd, and also because the telegram with those entries was not sufficient to warrant a conviction on the counts of the indictment based on those entries of February 22nd.

6. After the verdict the defendant Allis moved for a new trial on the grounds, among others, that the verdict was contrary to the law and the evidence. The court erred in its decision in overruling this motion, and this the said Allis is ready to verify.

MARTIN AND MURPHY.

Filed December 27th, 1893.

RALPH L. GOODRICH, *Clerk.*

93 On January 9, 1894, as follows:

Before the Honorable Walter H. Sanborn, circuit judge.

UNITED STATES
v.
HORACE G. ALLIS.

It is ordered that the defendant serve a copy of the proposed bill of exceptions herein upon the United States district attorney for the district aforesaid forthwith, and that said district attorney serve any proposed amendments to said bill he desires to have inserted therein upon the defendant's attorneys within seven days after such service.

Dated January 2, 1894.

(Signed) WALTER H. SANBORN,
U. S. Circuit Judge.

94 On March 8th, 1894, as follows:

UNITED STATES
v.
HORACE G. ALLIS.

Comes the defendant, by Martin and Murphy, Esqrs., his attorneys, and files herein his bill of exceptions, which is signed by Hon. Walter H. Sanborn, circuit judge.

Which bill of exceptions is as follows:

95 In the Circuit Court of the United States for the Western Division of the Eastern District of Arkansas.

UNITED STATES, Plaintiff,
vs.
HORACE G. ALLIS, Defendant. } 1098. Bill of Exceptions.

Be it remembered that at the October term, 1893, of the circuit court aforesaid, held in the United States court-rooms, in the city of Little Rock, in said western division of said district, on the trial of the above-entitled cause of The United States *v.* Horace G. Allis, which was begun on the 27th day of November, a day of said term, and occurred before the Honorable Walter H. Sanborn, circuit judge of the eighth circuit, who was present and presiding, the following proceedings were had and exceptions taken as herein stated:

The United States, the plaintiff in this case, introduced evidence tending to establish the charges against the defendant in counts numbered 1, 2, 3, 4, 5, 6, 8, 9, 10, 13, 14, 15, 16, 17, 18, 19, and 25 of the indictment; that the report to the comptroller of December 9th, 1892, was sworn to by the defendant Allis and signed by him as president of the bank; that in said report, under the head "individual deposits subject to check," said report shows $334,594.59, when the books of the First National Bank of Little Rock at the close of business on that day show the actual amount which should have been entered under this item to be $234,594.59; that in said report, under the item "notes and bills rediscounted," the report shows $121,180.84, when the books of the bank at the close of business on that date show the actual amount which should have been placed under that item to be $221,180.84; that a pencil memorandum report was made out by the book-keeper, C. H. Yost, as shown by the books, and that the defendant, H. G. Allis,

96 directed the said changes to be made; that the report of March 1st, 1892, to the comptroller, under the item "bills payable," shows nothing charged, when the books of the bank at the close of business on that day show the amount which should have been entered under said item to be $43,000; that in said report, under the item "due from other national banks," the report shows $69,659.29, when the books of the bank at the close of business on that date show the amount which should have been entered under said item to be $9,659.29; that in said report, under the item "overdrafts," is shown $4,018.15, when the books of the bank at the

close of business on that date show overdrafts to the amount of $24,051.20; that the difference between this and the amount as shown in the report was put into the item of "loans and discounts;" that said report, under the item "loans and discounts," shows $746,916.17, when the books of the bank at the close of business on that date show $726,883.63; that said report was sworn to by the defendant and signed by him as president of the First National bank; that the discrepancies between the report and the books were made at the instance of the defendant; that the report of the 12th of July, 1892, to the comptroller, under the item "overdrafts," shows $5,126.80, when the books of the bank at the close of business on that date show overdrafts amounting to $21,903.78; that the difference between this amount and the amount shown by the report was put into the item in the report under the head of "loans and discounts;" that said report, under the item of "loans and discounts," shows $808,230.07, when the books of the bank at the close of business on that date show $791,469.49; that the discrepancy between the books of the bank and the reports to the comptroller *were* made at the instance and under the direction of the defendant; that on the 6th day of March, 1892, the defendant caused the National Hide and Leather Bank of Boston, Massachusetts, to be charged on the books of the First National Bank of Little Rock with $50,000 in the book and page alleged in the 10th count of the indictment, and at the same time drew a cer-
97 tificate of deposit payable to said National Hide and Leather bank and charged on the books to the First National Bank of Little Rock $50,000 to the account of certificates of deposit; that the said charge of $50,000 to the National Hide and Leather Bank of Boston was fictitious; that there had been no transaction and no account between the said National Hide and Leather Bank of Boston and the First National Bank of Little Rock; that on the 3rd day of February, 1892, under the directions of the defendant, the Fourth National Bank of New York was charged with $5,000 on the books of the First National Bank of Little Rock in the book and at the page mentioned in the 13th count of the indictment; that said charge was fictitious; that said Fourth National Bank of New York at that date did not owe that amount or any part thereof to said First National Bank of Little Rock; that on the 22nd day of February, 1892, said Allis caused an entry to be made upon the books of the First National Bank of Little Rock, crediting himself with $50,000, said entry being in the book and at the page mentioned in count 14 of the indictment; that said credit entered into and was carried in the defendant's account until the bank closed, in January, 1893; that said entry was fictitious and false; that he was not entitled to the same; that he did not pay said First National Bank of Little Rock that amount or any part thereof, nor did he pay that amount to any one else for the benefit of said bank; that on the 22nd day of February, 1892, the defendant caused an entry to be made in the book and at the page mentioned in the 15th count of the indictment, charging the First National Bank of New York with $25,000; that said entry was false;

that the said First National Bank of New York at that date did not owe that amount or any part thereof to the said First National Bank of Little Rock; that on the 3rd day of February, 1892, the defendant caused an entry to be made in the book and at the page mentioned in count 16 of the indictment, charging the First National Bank of Chicago with $15,000, the Fourth National Bank of New York $5,000, and the Continental National Bank of Memphis $15,000; that said entries were false; that the said Massachusetts Loan and Trust
98 Company did not owe the said sum of $15,000.00 or any part thereof to the First National Bank of Little Rock; that the said Fourth National Bank of New York did not owe said sum of $5,000 or any part thereof to the First National Bank of Little Rock; that said Continental National Bank of Memphis did not owe the said sum of $15,000 or any part thereof to the First National Bank of Little Rock; that on the 1st day of March, 1892, the defendant caused an entry to be made in the book and at the page described in the 17th count of the indictment in which the National Hide and Leather Bank of Boston was credited with $43,000 and the American National Bank of Kansas City was charged with $15,000 and the National Bank of Commerce of St. Louis was charged with $28,000; that said entries were false; that the First National Bank of Little Rock never had any account with the National Hide and Leather Bank of Boston; that the American National Bank of Kansas City had not received and did not owe the First National Bank of Little Rock the said sum of $15,000 or any part thereof, nor had the National Bank of Commerce of St. Louis received the $28,000 or any part thereof; that on the first day of March, 1892, the defendant caused an entry to be made in the book and at the page described in count 18 of the indictment to the credit of the account "bills payable" in the sum of $43,000; that said account was not entitled to said credit; that on the 3rd day of February, 1892, the defendant caused an entry to be made in the book and at the page mentioned in the 19th count of the indictment in which the Continental National Bank of Memphis, Tennessee, was charged with $15,000; that said charge was false and fictitious; that said bank did not owe the First National Bank of Little Rock that amount or any part thereof; that on the 3rd day of February, 1892, the defendant caused an entry to be made in the book and at the page mentioned in count 25 of the indictment by which the First National Bank of Chicago was charged with $15,000; that this entry was false; that the said First National Bank of Chicago did not owe the First National Bank of Little Rock said sum of
99 $15,000 or any part thereof; that in August, 1891, the defendant caused an entry to be made in the books of the First National Bank of Little Rock charging the Massachusetts Loan and Trust Company with $35,000, and it was shown by an officer of that bank that said entry was false and fictitious; that that amount nor any part thereof had never been placed in that bank to the credit of the First National Bank of Little Rock; that there had been no account between the two banks.

W. J. HAYES, a witness in behalf of the United States, after having testified, among other things, to his experience in national banking business, his familiarity with the system of book-keeping in such business, his recent examination of the books of the First National Bank of Little Rock, Arkansas, and to the amount of money due said bank on account of overdrafts, as shown by said books at the close of business on the 1st day of March and the 12th day of July, 1892, the only dates respecting which the said Allis was charged in the indictment with making false entries as to overdrafts, was asked by the attorneys for the United States this question:

100 "Have you examined the books in reference to Mr. Allis's individual account and are you able to state how it stood during the period of time covered by the counts of the indictment here? If so, state how his account stood in the matter of overdrafts to the bank from the 1st of February, 1892, to the 10th of December, 1892."

The defendant, Horace G. Allis, by his attorneys, objected to this question for irrelevancy and incompetency and stated that there was no count in the indictment under which it was admissible or upon which the evidence sought by it could throw any light; that it was too broad, and that as the only two counts in the indictment charging false entries in respect to overdrafts specified the 1st of March and the 12th of July, the dates for which the reports in which these false entries were alleged to have occurred were called, the evidence of overdrafts should be limited to those dates.

But the court overruled the objection and permitted the question to be answered, and to this ruling of the court in disallowing the objection and permitting the question to be answered the defendant Allis then and there excepted.

The witness Hays then answered the question, saying:

"On the 2nd day of February, 1892, his, Allis's, account with the bank was overdrawn, as shown by the books, $30,159.59; on the 8th of February it was overdrawn, as shown by the books, $91,600; on the 15th of February, $92,180.65, and on the 20th of February, $42,180.65; on the 1st of March it was $57.23; on the 19th of March it was $13,272.50; on the 7th of March it was $7,710.80; on March 31st it was $30,000; on the 18th of April it was $8,658.44; on the 21st of April it was $1,705.04; on May 10th it was $1,111.32; on May 31st it was $23,110.57; on the 6th and 7th of July it was $10,000; on the 9th, $14,000; on the 10th, 11th, and 12th, $15,000; on the 20th it was $209.78; on the 31st it was $7,160.29; on

101 the 19th of November it was $23,408.14; on December the 6th it was $38,040.82.

"These sums represent the amount his account was overdrawn at the beginning of business on the several dates given. His highest overdraft was in February, 1892, amounting to $92,130.65. On the 7th of May he had to his credit $23,187.41; on the 13th of July, $33,926.05; on the 15th, $23,926.05; on the 17th, $22,816.62; on the 19th, $32,240.42."

C. H. YOST, the second witness introduced on the part of the United States, testified in chief, among other things, that he was the general book-keeper of the First National Bank of Little Rock, Arks., after April, 1891, and kept private ledger M, the journal, and private trial balance book; that on February the 3rd, 1892, he entered on the books of the bank a charge of $5,000 against the Fourth National Bank of New York, a charge of $15,000 against the First National Bank of Chicago, and a charge of $15,000 against the Continental National Bank of Memphis, Tenn., on charge tickets written and signed by W. C. Denney, cashier of said First National Bank of Little Rock, and also a credit to the Massachusetts Loan and Trust Co. of $35,000 on a credit slip written by said Denney; that on the 22nd day of February, 1892, he entered on the books of said bank a charge against the First National Bank of New York of $25,000 as deposited by H. G. A. (Coffin), the H. G. A. meaning Horace G. Allis, on charge tickets written and signed by said Denney; on the same day a credit to said Allis of $50,000 on a credit slip written by said Denney; that he made out the report to the Comptroller of the Currency of the condition of the bank at the close of business on the 1st day of March, 1892, under the direction and at the dictation of the defendant Allis, and that it did not correspond with the books as they stood on that day; that he made out a pencil memorandum report to said comptroller of the condition of the bank at the close of business on the 12th day of
102 July, 1892, in accordance with the books, and then at the instance of the defendant Allis changed it by reducing the overdrafts $16,766.98 and adding the same sum to loans and discounts and copied it in ink as changed; that he also made out the pencil memorandum copy of the report of the condition of said bank at the close of business on the 9th day of December, 1892, in accordance with said books, and delivered it to the defendant Allis, and that when it was returned to him to be copied in ink it had been changed by reducing the item of bills and notes rediscounted $100,000 and increasing the item of individual deposits subject to check $100,000, and that by direction of said Allis he made changes in the books on March 6th and July 12th, respectively, to make them correspond with the report of March the 1st and July the 9th.

This witness, after testifying on cross-examination that he made out all the pencil memoranda for the reports of the condition of the bank after he became general book-keeper, except the one for June, 1891, made the changes to which he testified in chief, because he was only a book-keeper and thought he had to do as Allis directed him, and made a pencil memorandum for the report of the condition of the bank at the close of business on the 15th of September, 1892, when Allis was absent from the State, being the report next preceding the report of the condition of the bank at the close of business on December the 9th, and delivered it to W. C. Denney, cashier, and did not know where it was; was asked this cross-question:

"Mr. Yost, I will ask you if that September report, testified to as made out by you and signed and sworn to by Mr. Denney, the

cashier, did not contain the identical change of $100,000, from the item of 'bills and notes rediscounted' to 'individual deposits subject to check,' that is complained of here in the December report."

To this cross-question the attorneys for the United States objected for irrelevancy and incompetency, and the court sustained the objection and refused to permit the cross-question to be
103 answered, and it was not answered. To this ruling of the court in sustaining said objection and refusing to permit the cross-question to be answered the defendant Allis then and there excepted.

W. C. DENNEY, another witness introduced on behalf of the United States, testified, among other things, that during the year 1892 and up to the date of the failure he was the cashier of the First National Bank of Little Rock; that the defendant Allis left the State of Arkansas about the 25th of January, 1892, and did not return until the latter part of the following month; that Allis before leaving told him to transfer, from the charge against the Massachusetts Loan and Trust Co. of $35,000, $5,000 to the Fourth National Bank of New York, $15,000 to the First National Bank of Chicago, and $15,000 to the Continental National Bank of Memphis, Tenn.; that these directions were unwritten, and that he carried them in his memory until the 3rd of February, 1892, when he caused the entries to be made; that on the 20th of February he received a telegram in cipher, signed by the defendant, H. G. Allis, directing him to credit his, Allis's, account with $50,000, and to charge the First National Bank of New York and the Southern National Bank of New York with $25,000 each; that he took the dispatch in the back room and translated it from the cipher book which was in use in the bank, and Nick Kupferle wrote it down as he translated it from the book.

The attorneys for the United States then offered the translation in evidence, but the defendant Allis, by his attorneys, objected because the same was irrelevant and incompetent, and the court sustained the objection upon the ground that it did not then appear that there was not better evidence.

W. C. Denney, testifying further, said:

"The cipher telegram is the one received by me, except there is a part of it gone; it was on two pieces of paper; the second sheet is gone; it was signed by H. G. Allis when I received it. I
104 found the cipher telegram and the translation at my house in Little Rock, I think, after the bank failed. The cipher telegram and the translation were found in my pocket with the corners folded together. The translation here exhibited is the correct translation of the telegram I received from the defendant, authorizing me to make the entries.

"Allis had a copy of the cipher book, by which the translation could be made, and there was a copy in the bank at the time I received the telegram and from which it was translated."

That Allis, the defendant, asked him for this cipher book in August, 1892. He gave it to him then and had never seen it since;

that he had made diligent search for the cipher book; also for the remaining part of the cipher telegram. He had made diligent search at his house and in the files of the bank—everywhere he thought they might be found—and could not find the cipher book nor the remaining part of the cipher telegram. The translation is the translation of the whole of the cipher telegram.

E. C. NEWTON then testified in behalf of the United States as follows:

"I live in the city of Little Rock; am the manager of the Western Union Telegraph Company. When messages are placed with the Western Union for transmission the originals are preserved six months and when messages are received at this place for delivery we keep copies of the same for six months; they are then destroyed."

The cipher telegram was here exhibited to the witness and he said: "It has our ear-marks on it, but I don't know further than that. It is on one of our blanks. Some of our operators must have received it here. I think the handwriting is the handwriting of one of our operators. It says, 'Received by K.' This is the private signal of Mr. Frieze, an operator in our office. All the telegram is not here; only the front page seems to be here. The copy of this
cipher telegram which was kept by the company has been
105 destroyed and cannot now be produced."

W. C. DENNEY was recalled. The attorneys for the United States again offered the cipher telegram in evidence and the counsel for the defendant Allis objected on the ground of incompetency and because only a part of the message was shown.

Thereupon the witness, Denney, upon further questioning, testified that that was the whole of the translation of the entire original telegram received by him from the defendant Allis; that a little had been clipped off the end, but not the whole of any word. There is the word "Monday" only shows "Monda" and the word "Coffin" only shows "Coffi" and only the H. of Allis's name; this is all. The whole of the translation is there, except these letters. The telegram was received on the 20th of February, but the entries in the book were not made until the 22nd of February, as directed. And thereupon the court overruled the objection of the defendant and the translation of the telegram was read to the jury. It is as follows:

"FEBRUARY 22ND, 1892.

Received 5.25 p. m.

W. C. Denney, Little Rock, Ark.:

Credit Allis $50,000, charging $25,000 each to the First National Bank of New York and twenty-five thousand dollars to the Southern National Bank of New York. Don't draw this balance until Tuesday, to allow Coffin to negotiate; holiday Monday; St. Louis Southern Sunday and Monday; thence Illinois; tell wife.

H. * * *"

The attorneys for the United States here offered the cipher telegram in evidence, but the attorneys for the defendant objected and the court sustained the objection and it was not read. Denney, further testifying, said:

"Acting upon this telegram, I caused said entries to be made on the 22nd of February, 1892. This $50,000 with which Allis was credited by reason of this telegram has been carried in his account ever since that date and he has never made any objections, as I have heard of."

106 It was also proved by the officers of said banks, to wit, the First National Bank of New York and the Southern National Bank of New York, that the $25,000 charged by reason of said telegram on the 22nd of February, 1892, to each of said banks, nor any part thereof, had not been placed with said banks by the defendant Allis nor by any person for him for the credit of said First National Bank of Little Rock, but they testified that on other dates other sums were deposited with their banks by Mr. Allis in the month of February.

H. G. ALLIS testified in his own behalf, among other things, as follows:

Q. You are charged with making a false entry in Individual Ledger A to K, at page 2, deposit of $50,000, on February the 22nd, 1892, and with making a charge or debit to the First National Bank of New York $25,000 on the same date, and both of these charges were false; what have you to say with reference to this?

A. I don't remember that I ever gave any instruction to make any such entries. At that time Mr. Coffin was in New York with me assisting me in some negotiation for money. It may be that I telegraphed them that I had hope or expectation of getting money through Mr. Coffin, but that I authorized them to credit or charge any amounts there I have no recollection of and don't think that I ever sent any such letter or telegram.

Q. Did you hear the telegram that was read here in connection with the last one of those items?

A. I did, sir.

Q. Did you send that telegram?

A. No, sir; not in that language.

Q. Would you or not have instructed a charge to be made before the money was deposited or before you understood it to be deposited?

A. I would not have done so, sir.

Cross-examination:

107 Q. Mr. Allis, were you in New York city about the 22nd day of February, 1892?

A. No, sir; I was not there on the 22nd of February.

Q. Were you there on the 20th?

A. I was; yes, sir.

Q. Was there any one else in New York at that time representing the First National Bank of Little Rock?

A. No, sir.

Q. You did send a telegram to the cashier or to Mr. Kupferle, you don't remember which, instructing them as to what disposition should be made of that $25,000 in regard to the transaction with Mr. Coffin, didn't you?

A. No, sir; I don't remember whether I telegraphed them at all or not. If I did I told them that negotiations were being made to be perfected in that line, possibly, but I couldn't recollect.

Q. I understood you to state yesterday—I don't know whether this telegram was presented to you or not (referring to the telegram previously offered in evidence)?

A. It was not.

Q. I will ask you to examine that, Mr. Allis, and see if that is not a telegram that you sent from New York.

A. (Examines the telegram.) I couldn't say, sir, whether it is or not. It is not complete.

Q. Then you don't know whether you sent that telegram or not?

A. I do not, sir.

Q. Did you not state yesterday that you did not send it, Mr. Allis?

A. I did not so state. I stated I may have sent it. It may be all right, I don't know.

Q. How is that?

A. I say I may have sent the telegram. You didn't show me the translation of it.

Q. Yes; the translation is with it, at the back of it. The
108 translation is underneath there, Mr. Allis. Just see if that is it.

A. I don't believe I ever sent that telegram, Mr. House. The telegraphic translation is inconsistent. This translation says to credit me and charge those banks, and then don't draw, and then to give Coffin time to negotiate, showing that he did not have the money at all. I never sent such a telegram in my life, sir.

Q. Now, I understand you that upon examining what purports to be the translation of the cipher telegram that you did not send that at all?

A. That translation is not a correct translation of any telegram that I sent at all, sir.

Redirect examination:

Q. Mr. House asked you, in your cross-examination, if you did not state on yesterday that you did not send the telegram from New York on the 22nd. You said you did not say so. You did state, though, on yesterday, that you did not send a telegram of which that cipher was a proper translation, didn't you?

A. I said yesterday that I did not think that that telegram was ever sent in that language. I may have sent a telegram, or may have written him.

Q. You have used cipher books a good deal, have you not, Mr. Allis?

A. Yes, sir.

Q. I will ask you if there is any difficulty attendant upon deciphering one of those cipher telegrams.

A. It is rarely you ever get a cipher telegram accurate.

Allis further testified that he did not direct on the 22nd day of February, 1892, or at any other time, that the First National Bank of New York should be charged with $25,000, nor that the Southern National Bank of New York should be charged with $25,000, nor that the defendant should be credited on the books of the
109 First National Bank of Little Rock with $50,000, and if that amount entered into his account and was continued in the same that he had no knowledge of it; that it was not true that W. C. Denney in August, 1892, gave him the cipher book; that he lost the one which he had and called upon Denney for the one that was kept in the bank, but could not get it, and that he had never been able to read any of the telegrams since.

After the jury had been charged and had deliberated for several hours the court recalled them and inquired if they had reached a verdict; to which the jury, through their foreman, responded they had not. The court then asked if there was any portion of the charge of the court that it would be of assistance to them to have re-read. To this question the jury, through their foreman, responded as follows:

There is, sir, a portion of the charge that is not fully understood by all the jury in reference to the testimony—the weight of the testimony—of the witnesses.

The court thereupon re-read that part of the general charge which related to the conflict and weight of testimony of the witnesses. After reading this part of the charge the court stated further: You may conduct your deliberations as you choose, but I will call your attention again to the charge relating to the 14th, 15th, and the 8th and 9th counts of the indictment, and to call these to your attention more clearly I will again read to you that portion of the charge relating to the claims of the parties concerning these four counts.

And thereupon the court read that part of the general charge to the jury which related to the 8th and 9th counts of the indictment and then read that part of the charge which relates to the 14th and 15th counts of the indictment, which is as follows:

"By counts 14 and 15 of this indictment the Government charges that on the 22nd day of February, 1892, the defendant, as president of the bank, knowingly made false entries in certain
110 books of the bank with the intent explained to you, by which it was made to appear on those books that on February the 22nd, 1892, the Little Rock bank became indebted to the defendant in the sum of $50,000, and that the First National Bank of New York became indebted to the Little Rock bank in the sum of

$25,000 by reason of the deposit by Mr. Allis of $25,000 in the First National Bank of New York to the credit of the Little Rock bank.

"It appears from the books of the Little Rock bank that on February the 20th, 1892, Mr. Allis had drawn out of the bank $42,180.65 more than he had deposited in it, and that he then owed the bank that amount. There is a telegram in evidence by which, if it was sent by him and is correct, he directed the cashier of the Little Rock bank to charge the First National Bank of New York $25,000, the Southern National Bank of New York $25,000, and to credit his account $50,000.

"Mr. Denney testified that pursuant to this telegram he charged these banks and credited the defendant with the $50,000. The officers of the two national banks testified that Mr. Allis never deposited either of these sums of $25,000 with either of them; never became indebted to the Little Rock bank on account of any transaction portrayed by these entries. No witness comes to say that they did, and, if you believe their testimony, these entries are false; there were no such transactions as they represent. The defendant testifies that he was in New York on February 20, 1892. In one place he says that he may have sent a telegram to the bank on that day. In another place he says that he did not send and could not have sent any telegram of the tenor of the translation in evidence, because he would not order a charge against a bank before the money was actually deposited. You have the telegram in evidence, and Mr. Denny testified that it was received by him in cipher; that the translation in evidence is a correct translation of the cipher telegram directing these entries, and the original telegram had Mr. Allis' name attached to it, and that he made these entries in
111 obedience to it. You must weigh this testimony and determine who is correct. You may properly consider the motives that would probably have influenced either Mr. Denney or Mr. Allis to make or direct the making of these entries, whether it is more or less probable that the defendant, whose account was largely overdrawn, would direct the making of these entries by which he received a false credit of $50,000, than that Mr. Denney would either forge or change a telegram or make false entries in the books of the bank by which he apparently gained nothing personally, while his bank gave the defendant this false credit. If you conclude that the defendant did not sign a telegram, the true meaning of which is embraced in the translation of this telegram in evidence, and did not direct these entries to be made, you need not consider these two counts further, but should acquit the defendant of the offences charged in them. If, however, you conclude that this is a genuine translation of a telegram sent by Mr. Allis, and that the entries were made in obedience to it, what was their effect? It was this: The defendant Allis received a false credit of just $50,000 from the Little Rock bank and gave it in return the poor privilege of charging two New York banks on its books with that amount, which these banks did not owe and which the Little Rock bank could never collect from them.

"And if he caused these entries to be made, with what intent did

he do so? If a customer or friend of yours who owed you $40,000 on account should come to you and tell you that he had deposited $50,000 to your credit in the German National Bank of Little Rock, and that he wanted a receipt for the $40,000 that he owed you and wanted a credit for the other $10,000, and you should give him the receipt and the credit, and should subsequently learn that he had never deposited one dollar in that bank for you, with what intent would you conclude he had made these statements? Would you think it was with an honest purpose or with some intent to injure or defraud you?"

In the general charge the court had said to the jury, among
112 other things:

"You are not bound to be governed by any statement of the evidence made by the court, but if your recollection accords with that of the court you may accept it, and if it differs from it you may be governed by your own memory. It is your exclusive province and duty to determine the issues of fact here presented and the weight and credibility of the testimony of the witnesses, and by your determination of these questions the court will be bound. If in the course of what the court may say to you any expression of opinion should drop as to the disputed issues of fact or the credibility of the testimony of the witnesses you are not bound by any such expression, but it is your privilege to adopt or disregard it as you may see fit."

After reviewing the evidence the court had said to the jury in the general charge:

"The court has reviewed the counts of this indictment and called your attention to some of the important evidence in the hope that this might be of some assistance to you in reaching a just verdict. There is much testimony bearing upon many of these counts that has not been called to your attention. You will consider that as carefully and as well as that which has been referred to and will remember that whatever may have been said by the court you are the exclusive judges of the questions of fact and of the credibility of the witnesses."

And the court further charging said:

"Of course, gentlemen of the jury, you must consider all the other parts of the charge heretofore read to you also. I have simply called your attention to these four counts, thinking possibly I might assist you in arriving at a just conclusion.

"The court and jury are here to come to a just and righteous result. No doubt you are as anxious to reach it as am I.

"So anxious is the court that, having spent now two weeks in
the trial of this cause, I am willing to stay here another if
113 by that means we may be able to reach a just and proper
result in this trial. You may retire."

And thereupon the defendant, through his counsel, made the following exceptions, to wit: "The defendant excepts to the action of the court in recalling the jury and in arguing the testimony and in stating part of the testimony on certain points without stating the entire testimony."

After the verdict of guilty on the 14th count the defendant Allis filed a motion for a new trial on the grounds—

That the court erred in overruling the objection of the defendant to the foregoing question propounded by the Government's attorneys to the witness W. J. Hays.

That the court erred in sustaining the objection of the Government's attorneys to the foregoing cross-question propounded by defendant's attorneys to the witness Yost.

That the court erred in admitting the alleged translation of the telegram in evidence.

That the court erred in said charge.

And also because the verdict was contrary to the law and the evidence.

And because the jury were guilty of misconduct in their deliberations and prior thereto.

But the court overruled the motion, and the defendant Allis excepted and now presents this his formal bill of exceptions, as well to all the rulings and action of the court aforesaid during the trial and prior to the filing of the motion for a new trial as to the overruling of said motion, and prays that it be now signed and sealed as part of the record in this case, which is done this sixth day of March, 1894.

WALTER H. SANBORN,
Circuit Judge.

March 6, 1894.

Filed March 8, 1894.

RALPH L. GOODRICH, *Clerk.*

114 Which citation is as follows:

115 THE UNITED STATES OF AMERICA:

To the United States, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, not exceeding thirty days from Dec. 27, 1893, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the western division, eastern district of Arkansas, wherein Horace G. Allis is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment and sentence rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Henry C. Caldwell, judge of the circuit court, this 27 day of December, A. D. 1893.

[The Seal of the Circuit Court, Western Division of East. Dist. Ark. U. S A.]

HENRY C. CALDWELL,
U. S. Circuit Judge.

I hereby acknowledge service of the above notice and citation this Dec. 27, 1893.

JOSEPH W. HOUSE, *U. S. Att'y.*

116 UNITED STATES OF AMERICA, }
Western Division of the Eastern District of Arkansas. }

I, Ralph L. Goodrich, clerk of the circuit court of the United States for the western division of the eastern district of Arkansas, in the eighth circuit, hereby certify that the foregoing writings annexed to this certificate are true, correct, and compared copies of the originals remaining of record in my office and constitute a true copy of the record and assignment of errors and of all proceedings in the case of United States against Horace G. Allis.

The Seal of the Circuit Court, Western Division of East. Dist. Ark., U. S. A.

In witness whereof I have hereunto set my hand and the seal of said court this eighth day of March, in the year of our Lord one thousand eight hundred and ninety-four, and of the Independence of the United States of America the one hundred and eighteenth.

Attest;

RALPH L. GOODRICH, *Clerk.*

Endorsed on cover: Case No. 15,530. E. Arkansas C. C. U. S. Term No., 661. Horace G. Allis, plaintiff in error, *vs.* The United States. Filed March 12th, 1894.

IN THE

Supreme Court of the [illegible]

October Term, 1894.

HORACE G. ALLIS, Plaintiff in Error,

vs. No. [illegible]

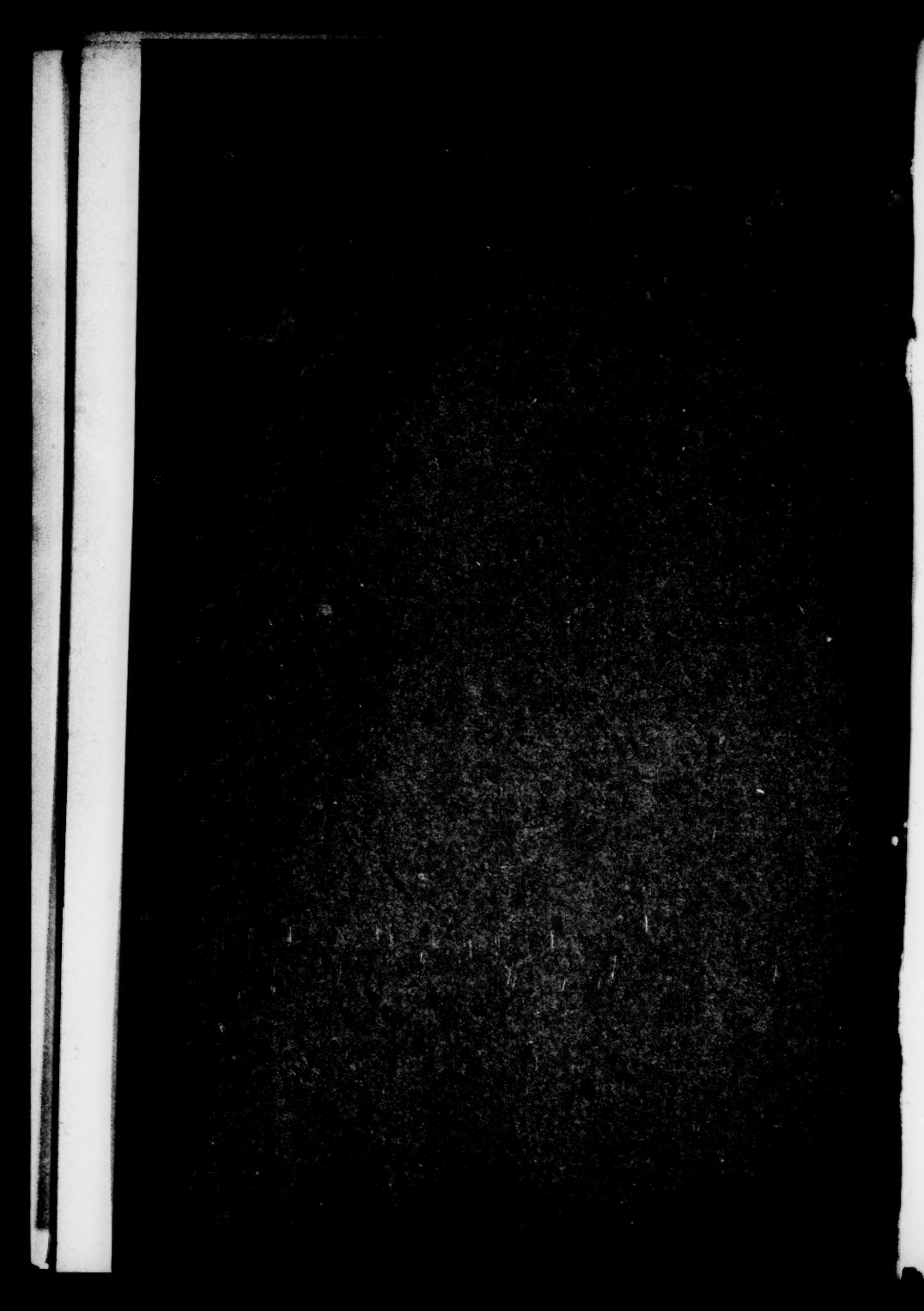
THE UNITED STATES.

In Error to the Circuit Court of the [illegible]
for the Eastern District of [illegible]

BRIEF FOR PLAINTIFF IN [illegible]

[illegible]

Press of McGILL & WALLACE, [illegible] H Street, N. W.



IN THE

Supreme Court of the United States.

OCTOBER TERM, 1894.

HORACE G. ALLIS, Plaintiff in Error,
vs.
THE UNITED STATES.
No. 661.

In Error to the Circuit Court of the United States for the Eastern District of Arkansas.

BRIEF FOR PLAINTIFF IN ERROR.

On May 13, 1893, the plaintiff in error was indicted by the grand jury for the Western Division for the Eastern District of Arkansas for the violation of section 5209 of the Revised Statutes of the United States. (Rec., 1, *et seq.*) After trial had, plaintiff in error was found guilty, on December 9, 1893, as charged in the indictment in count No. 14 (Rec., 39), which count charged, substantially, the plaintiff in error, who was president of the First National Bank of Little Rock, Arkansas, made, on the 22d of February, 1892, a certain false entry to his own credit of $50,000; that he knew the entry to be false, and made the same with the intent to unlawfully and wrongfully and wilfully deceive any agent who might thereafter be appointed under Title

LXII of Revised Statutes, United States, and with the intent to deceive certain officers of the First National Bank aforesaid, and divers other persons, firms, and corporations. (Rec., 19–21.)

Motion made for new trial was argued and submitted and the same was overruled by the court. (Rec., 39.)

Allis prosecutes this writ of error to review the proceedings had at that trial.

The assignments of error are several in number, based upon the rulings of the court below in matters of evidence, and also upon the charge of the court as being too full of argument and otherwise erroneous. (Rec., 41–55.)

It is deemed more convenient to note the assignments as the argument progresses instead of here setting them out in detail, as they are scattered through many parts of the Record. The glaring errors, upon which a reversal in this case is asked, arise upon the charge of the judge to the jury, the general charge and that delivered to the jury by their own request after several hours spent in the effort to agree upon a verdict, and the parts specifically excepted to will be presented here separately and discussed in their order. In effect, the court, after recalling the jury, proceeded to argue to them with great energy—too much so, in fact—the question of intent, a question within their province and not within that of the judge. The court and jury have separate and totally distinct offices to perform. Each should confine itself rigidly to its own sphere. It should never be forgotten that the former is to decide the law and the latter the facts. (*3 Gra. & Wat., N. T., 723*, and cases cited; *1 Green. Ev., 14 ed., sec. 49*, and cases cited.)

When a charge is argumentative this furnishes ground for reversal if it is calculated to mislead the jury. (*3 G. & W., N. T., sup., 848;* also see *2 G. & W., N. T.,*

363, note 2.) So much for the general principle in the common-law practice, and in the different States, and acknowledged and recognized in the United States courts as well. A few decisions will not be out of place here.

In *U. S.* v. *Quincy, 6 Pet., 466*, the court says :

"This intention is a question belonging exclusively to the jury to decide."

And in *Lee* v. *Lee, 8 Pet., 44*, the court says, approving *U. S.* v. *Quincy, sup.* : "When the intention with which an act is done becomes a subject of inquiry it belongs exclusively to the jury to decide;" and further, "and who, in such a case, would judge of the intention—the court or the jury? The answer can not admit of a doubt."

The court therefore erred in arguing to the jury a question which belonged exclusively to them to decide, that is, the intent with which Allis did the acts alleged and complained of; he, in fact, "intimated to the jury his opinion upon a question of fact." (*2 Gra. & Wat., N. T., 364.*)

It would seem, from the language employed by the court in its recharge to the jury, it was anxious to reach one result—the conviction of Allis; and from the whole of such recharge but one idea can be had, as before said—that Allis must be found guilty. Now, even the merest suspicion of such a thing found in the court's language to the jury will cause a reversal of this case, upon principles at once elementary and just. In *3 Gra. & Wat. N. T., 707*, are found these words—speaking of the province of a judge :

"It is not surprising, then, that his instructions should have controlling weight with the jury, and that after a mere hint from him should carry with it the force of an injunction. Hence it is that the greatest strict-

ness is observed in requiring him, in his instructions, to confine himself to legitimate limits. Even some slight deviation, which seems to be unnoticed, and therefore to escape observation, will often, equally with more broad, pointed, and positive error, prove fatal to a correct result. If he oversteps his bound in the least the parties can justly complain, for it is difficult to tell how far the jury may have been misled. As the issue is made up of law and fact, and the jury take former from the judge, it follows that unless his instructions are correct there will always be danger of an erroneous verdict. Any misdirection, therefore, in point of law, is regarded with jealousy ; and if there is the least probability of its having misled the jury to the prejudice of either party a new trial will be granted."

When the trial judge undertook to draw the attention of the jury to a supposed case—but giving, in truth, the facts, as he understood them, in this very case, if he did not throw his whole judicial weight into the jury-box and influence this verdict, then the rule we have been discussing is a myth and is entitled to no place in the books.

The able counsel who managed this case for the Government in the trial could not, with all their sagacity and power of assertion, have made a more direct and cogent argument than is contained in this statement. Read it :

"And if he caused these entries to be made, with what intent did he do so ? If a customer or friend of yours who owed you $40,000 on account should come to you and tell you that he had deposited $50,000 to your credit in the German National Bank of Little Rock, and that he wanted a receipt for the $40,000 he owed you and wanted a credit for the other $10,000, and you should give him the receipt and the credit and should subsequently learn that he had never deposited one dollar in that bank for you, with what intent would you conclude he had made these statements ? Would

you think it was an honest purpose, or with some intent to injure or defraud you?" (Rec., 54, 55.)

There is something more than a mere intimation here by the judge that his opinion was Allis was guilty; there was almost a direction to the jury to so find him; and this action of the judge falls directly with the ruling of the court in *Dingman* v. *State*, *48 Wis.*, *485*: "There can hardly be a doubt that every man upon the jury, after hearing the charge, was of the opinion that the learned judge thought the verdict ought to be for the plaintiff, and if the expression of opinion is made in such a manner that the jury regard it as a direction to them, it is fatal error;" and then the court refers to *Vedder* v. *Fellows*, *20 N. Y.*, *126*, for the rule in such cases, and to this case we earnestly ask the attention of the court. Reference is also made to *Hill* v. *State*, *17 Wis.*, *617*.

In *McDuff* v. *Journal Co.*, *47 N. W. Rep.*, *671*, the court reversed the case merely because the trial court complimented attorney Pound (plaintiff's attorney) for "knowing how to try a law case," on account of the impression favorable to the plaintiff it may have made on the jury.

No intimation is to be given out here that Judge Sanborn intended to make an impression unfavorable to defendant in this statement, nor is it required to be so given out, for it is merely a question of fact—did he make such an impression?

In Cronkhite *v.* Dickerson (51 Mich., 177), we find this ruled: "It is insisted by the defendant's counsel," as here, "that these suggestions by the court were calculated to make an impression unfavorable to the defendant upon the minds of the jury. Of course, nothing of the kind was intended by the court; still, we think the suggestions open to the criticisms made by defendant's

counsel, and it is impossible to tell to what extent the defendant's rights may have been prejudiced by the remarks. Certainly the natural tendency was in that direction, and in this there was error."

See to the same point Wheeler *v.* Wallace (51 Mich., 355). Such is the view taken by the court in Bughman *v.* Byers (Pa.), 12 Atl., Rep., 357, where the judge expressed his opinion as to certain marks or boundaries in an action of ejectment. Hair *v.* Little (28 Ala., 236), and Moncallo *v.* State (12 Tex. Ap., 171), are striking reversals for a mere intimation or suggestion to the jury by the trial court as to the judgment or the conclusion of that court upon the testimony.

Similar cases without number could be produced, but it is not deemed necessary, for, after all, the doctrine is elementary; but as running in this line, and as applicable here, we would ask the court to refer to and consider the following as discountenancing the practice of trial courts, leaning beyond their province as expounders of the law, to influence in the least the judgment of the jury upon the facts.

Hewitt v. *Flint, etc.*, (*Mich.*), *34 N. W., 659;*
McFadden v. *Reynolds* (*Pa.*), *11 Atl., 638;*
Benham v. *Cary, 11 Wend., 83;*
Hollister v. *Johnson, 4 ib., 639;*
Hanford v. *Artcher, 4 Hill* (*N. Y.*), *271;*
Davis v. *Patrick, 122 U. S., 138;*
1 Gra. & Wat. N. Tr., 271; ib., 310; 3 ib., 774;
Smith v. *State, 55 Ark., 259.*

It is especially error to do as was done here, give one-sided instructions; instructions assuming a disputed state of facts as proved; instructions more in the nature of an argument than a statement of the law governing the case.

Thompson's Charging the Jury, III;
Knickerbocker, &c., v. *Foley, 105 U. S., 350;*
Leavenworth, &c., v. *Hunt, 11 Wall., 391;*
Washington, &c., v. *Gladmon, 15 ib., 401;*
New Orleans, &c., v. *Piaggio, 16 ib., 378;*
Orleans v. *Platt, 99 U. S., 676;*
Ludging v. *Sager, 84 Ill., 99;*
Thorp v. *Growey, 85 ib., 612;*
State v. *Orr, 64 Mo., 339;*
Morris v. *Lachman (Cal.), 8 Pac. Rep., 799;*
Sackett on Inst., 14.

And this court has, in late days, had occasion to read some pleasing and, it is to be hoped, wholesome lessons to judges and district attorneys as to going out of the record and discoursing juries on matters not before them, indulging in hypothetical discussions, and impressing their views of the facts upon juries.

Wilson's Case, 149 U. S., 60; Hall's Case, 150 ib., 76; Grave's Case, ib., 118; Starr's Case, 153 ib., 14.

In this case, while we have almost positive proof that the jury were misled by these observations, as we have seen, yet it must affirmatively appear they did not influence the jury, or it will be considered error; and if even the chances are equal, that this misdirection influenced the jury, the case will be reversed.

Vicksburg v. *O'Brien, 119 U. S., 99–103;*
Wardell v. *Hughes, 3 Wend., 416;*
Inglish v. *Breneman, 5 Arks., 383; 3 Gra. & Wat., sup., 707.*

Somewhat akin to the foregoing exception is the one saved to this language of the court, on page 55 of the Record:

"*So anxious is the court (to conclude the case) that having spent now two weeks in the trial of this case, I am willing to stay here another, if by that means we may be able to reach a just and proper result in this trial.*"

This was simply judicial coercion of the jury. It is of no moment to the law what the importance of the case may be in the eyes of the judge, or what his necessities or sacrifices may be in its trial. They can not be pressed upon the minds of the jury; if they are, the trial is not a fair one—the best of all rights we have in a free country. The least appearance of anything like this kind of influence brought to bear on the jury brands the verdict as unfair, and renders it worthless. The rule is so aptly stated in Green *v.* Telfair, 11 How. Pr., N. Y., 260, the case will be given somewhat in full:

"After having been absent several hours in consultation, returned into court, and stated their inability to agree. The judge informed the jury that it was very important that they should agree upon a verdict; that the case had excited considerable feeling, which would be increased if they should separate without agreeing; that no one juror should control the result, or otherwise the verdict would be the verdict of one man, and not of the twelve; that both parties had taken exceptions to decisions made during the progress of the trial, and it was necessary, before these decisions could be reviewed, that there should be a verdict of some kind; that for five years he had discharged but one jury because they were unable to agree, and that he would return Monday morning to receive their verdict. A verdict was rendered almost instantly. HARRIS, J., in reversing the lower court, said: 'A judge may also keep a jury together as long as in his judgment there is any reasonable prospect of their being able to agree; but beyond this I do not think he is at liberty to go. An attempt to influence the jury by referring to the time they are to be kept together, or the inconvenience to which they are to be subjected in case they shall be so pertinacious

as to adhere to their individual opinions, and thus continue to disagree, can not be justified. A judge has no right to threaten or intimidate a jury in order to affect their deliberations. I think he has no right even to allude to his own purpose as to the length of time they are to be kept together. There should be nothing in his intercourse with the jury having the least appearance of duress or coercion.' "

Sustaining and upholding this doctrine, if it needed any succor, are the following cases :

Slater *v.* Mead, 53 How. Pr., 57 ;
Phœnix Ins. Co. *v.* Moog, 81 Ala., 335.

In R. R. Co. *v.* Jackson, 81 Ind., 19, a new trial was ordered because the trial court told the jury "*if they do not agree to a verdict, I will keep you there until Saturday*"—four days, instead of a week, as in this case.

See, also, Furshman *v.* Mayor, 54 Ala., 263;
State *v.* Ladd, 1 La. An., 271;
State *v.* Bybee, 17 Kan., 462;
Physioe *v.* Shea, 75 Geo., 466;
Hancock *v.* Elam, 3 Bax. (Tenn.), 33;
R. R. Co. *v.* Barlow, 86 *ib.*, 537.

These cases, and others on this subject, proceeded upon the idea that a verdict obtained under such circumstances is not the judgment of the jury, *acting without restraint and in the discharge of their obligation to render a true verdict* according to the evidence. And such may be truly said of this verdict. If these rules, upon the two foregoing exceptions, are to be applied in any case, surely they should be in a case calling for five years' imprisonment.

The indictment charged false entries respecting overdrafts March 1 and July 12, 1892. The Government's special witness, Hayes, was permitted against Allis'

objection to show that he was overdrawn in the bank on many other days from February to December, 1892, in sums ranging from a few hundred dollars to nearly $100,000. (Rec., 47.) This was calculated to prejudice the jury against Allis. These items were not in issue, were not in the indictment, and therefore Allis' attention had not been called to them, and he could not be prepared to defend against them. The testimony was wholly irrelevant and very unjust to Allis. It is not permissible that when a man is on trial for a specific offense, to prove he committed at other times similar offenses. As said by this court in *Boyd* v. *The United States*, *142 U. S.*, *458*, the defendant was entitled to be tried upon *competent evidence* and *only for the offense charged*. This is but another form of stating the simple rule, that evidence must be confined to the issue.

Yost, bookkeeper, testified to the making of false entries, under the direction of Allis, and after excusing himself on the ground that he was a mere bookkeeper, and thought he had to do as Allis directed him, was asked by Allis if a report was not made out by him for the 15th of September, 1892, when Allis was absent from the State, and sworn to by Denny, cashier, in which a false entry of $100,000, the exact discrepancy charged against Allis as made in the next report for December following, was contained. An objection made by the prosecution to this question was sustained. None of the entries were made by Allis personally. All were made by others under his direction, as it was said, because it was thought everything had to be done as he said (Rec., 47–8); the answer would have contradicted the witness, and shown that false entries were made without his direction. It would have been well for the jury to have known this when the judge was charging them, as he did (Rec., 54), to consider whether it was more probable that the defendant, who was largely in-

debted to the bank, would direct the making of these entries, or that Denny would change or forge a telegram or make false entries by which he gained nothing. It would have showed that somebody besides Allis had motive for false entries. Yost says he made these entries (charged in the 14th and 15th counts) on the 22d of February, 1892, at the direction of Denny.

Denny says that on the 20th of February, 1892, he received a telegram from Allis directing him to credit him with $50,000, and debit the First National and Southern Banks of New York with $25,000 each, and took it in the back room and translated it from the cypher book, and Nick Kupferle wrote it down as he translated it from the book. (Rec., 49.) The translation is dated the 22d of February, 1892 (Rec., 50), and Denny says that acting on it he caused the entries to be made. If he translated such a telegram he did immediately after receiving it on the 20th, and if Kupferle wrote it he translated it from the cypher book; it is not probable that he would have substituted the date 22d for 20th. Would not Yost's answer have been of great importance in view of this testimony about the telegram and the judge's charge?

The translation of the telegram was improperly admitted, and it was error in the court prejudicial to Allis to allow it to be read. There was no proper foundation laid for its introduction, and it made evidence against Allis in his absence, and without having opportunity to be heard.

The testimony of Denny and Newton (Rec., 49–50) does not sufficiently explain and account for the alleged telegram to permit its translation to be used as evidence. The genuineness of the telegram must be proved from the very beginning, and not by the mere receiver of the dispatch. In the face of Allis' positive statement, he did not send a telegram in the language read (Rec., 51),

it is evident the authenticity of the telegram was not sufficiently established before it went to the jury. The particularity required in laying the proper foundation for the introduction of a mere translation of a telegram, not to speak of the original, is marked and most strict under all the authorities, and this proceeding falls far short of it.

Burt v. *Winona*, &c., *31 Minn.*, *472*;
Chester v. *State*, *23 Tex. Ap.*, *577*;
Richie v. *Bass*, *15 La. Am.*, *668*;
Smith v. *Easton*, *51 Md.*, *138*;
Lewis v. *Havens*, *10 Conn.*, *363*.

Upon this record it is evident that Allis has not had a trial *upon competent evidence*, nor a trial *only for the offense charged*; and it is evident the verdict against him was not a free and unrestrained finding by the jury, but one that was influenced by improper language in the charges of the court; and he submits the case should be reversed.

Respectfully,

JOHN R. DOS PASSOS,
THOS. B. MARTIN, and
A. H. GARLAND,
For Allis.

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JAMES H. McK

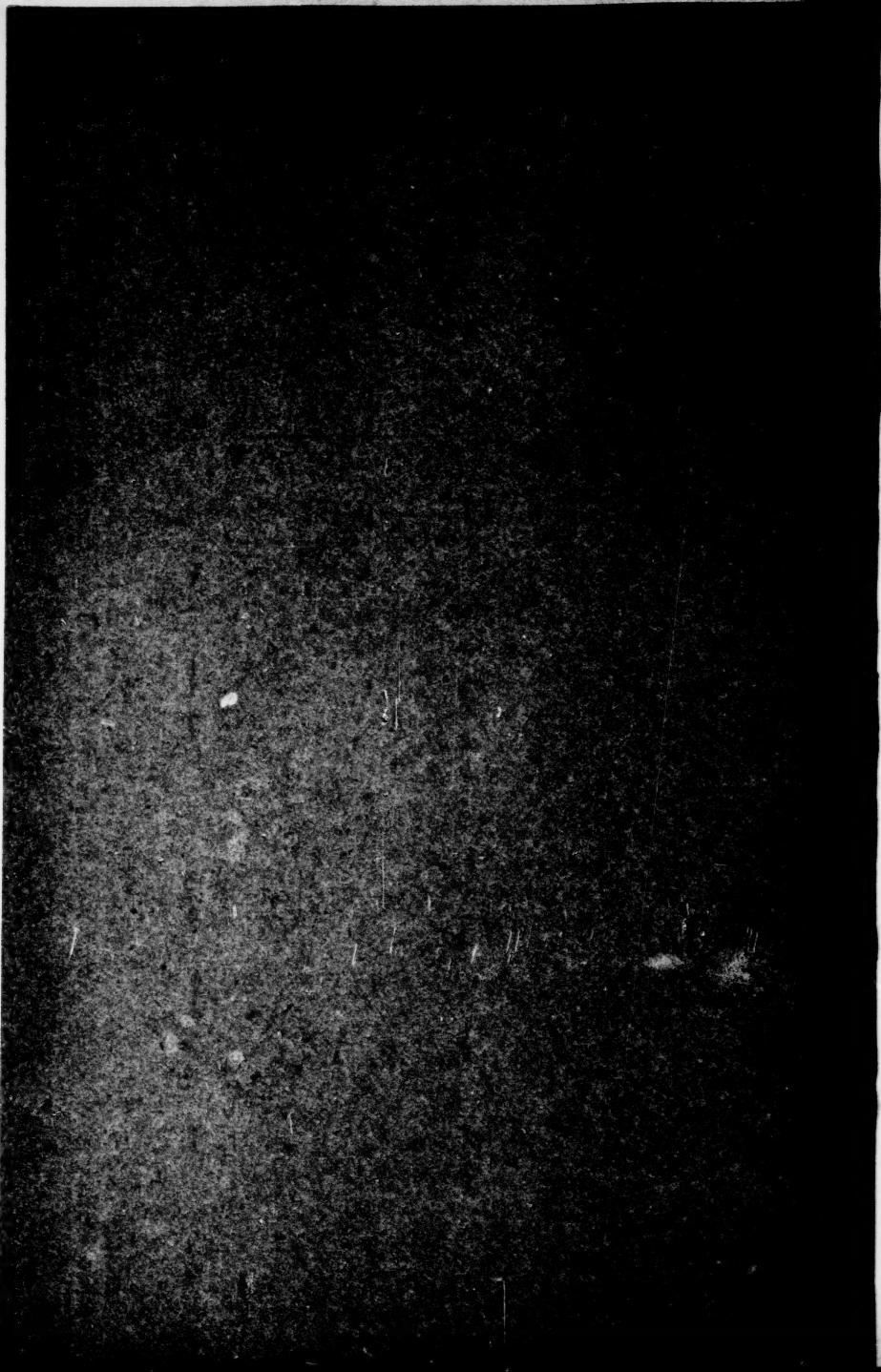
In the Supreme Court of the United States.

OCTOBER TERM, 1894.

HORACE G. ALLIS, PLAINTIFF IN ERROR,
v.
THE UNITED STATES.
No. 661.

BRIEF FOR THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.



In the Supreme Court of the United States.

OCTOBER TERM, 1894.

HORACE G. ALLIS, PLAINTIFF IN error,
v.
THE UNITED STATES.
} No. 661.

BRIEF FOR THE UNITED STATES.

On the 13th of May, 1893, the grand jury for the western division of the eastern district of Arkansas came into the United States circuit court for said district and presented a true bill against Horace G. Allis, under section 5209 of the Revised Statutes.

The bill contained twenty-five counts.

On the 27th of November, 1893, the said Horace G. Allis was arraigned in open court upon said indictment and plead not guilty. Whereupon a jury was empanelled and the cause proceeded with.

And on December 9 the jury returned into court with the following verdict:

> We, the jury, find the defendant guilty as charged in the indictment in count No. 14.

Upon this verdict judgment was rendered by the court, and the cause is now here for review upon writ of error.

THE CASE.

Count No. 14 (pp. 19–21), on which the plaintiff in error was convicted, charges that he,

> On the 22d of February, 1892, in the county of Pulaski, State of Arkansas, being then and there the president of a national banking association, * * * to wit, the First National Bank of Little Rock, * * * did then and there, without the knowledge and consent of said bank, and without the knowledge and consent of the directors thereof, did willfully, knowingly, and unlawfully make and cause to be made in a book then and there belonging to and in use by the said bank, * * * a certain false entry to the credit of him, the said Horace G. Allis, in words and figures as follows, to wit, under the head of deposits, "50,000" (meaning thereby $50,000), which said entry so made in the book aforesaid, to wit, * * * did in substance and effect declare and mean, and was intended to declare and mean, that the said Horace G. Allis on that date, to wit, the 22d of February, 1892, had deposited with the First National Bank of Little Rock aforesaid the said sum of $50,000; and that there was on that date the said sum of $50,000 on deposit with the First National Bank of Little Rock aforesaid, by reason of said entry, subject to the order and check of him, the said Horace G. Allis; and the grand jurors, upon their oaths aforesaid further say that said entry so made in the book aforesaid was false in this, to wit, that on the 22d day of February, 1892, the said Horace G. Allis had not deposited with the First National Bank of Little Rock aforesaid the said sum of $50,000, and on that date there was not the sum of $50,000 on deposit with said bank by reason of said entry, subject to the order and check of the said Horace G. Allis.

> And the grand jurors aforesaid, upon their oaths aforesaid, do further say and charge that the said Horace G. Allis, then and there well knowing that said entry, so made as aforesaid in the book aforesaid, was false as aforesaid, with intent then and there upon the part of him, the said Horace G. Allis, to wilfully, wrongfully, and unlawfully deceive any agent then, or who might thereafter be appointed under Title LXII of the Revised Statutes of the United States and the acts of Congress amendatory thereto, to examine the affairs of the bank aforesaid, and with the intent then and there to wilfully, wrongfully, and unlawfully deceive certain officers of said bank; and * * * to wilfully, wrongfully, and unlawfully injure and defraud the First National Bank of Little Rock aforesaid and divers other persons, firms, and corporations. * * *

Section 5209, Revised Statutes, provides:

> Every president, director, cashier, teller, clerk, or agent of any association who embezzles, abstracts, or wilfully misapplies any of the moneys, funds, or credits of the association, or who, without authority from the directors, * * * makes any false entry in any book, report, or statement of the association, with intent in either case to injure or defraud the association, or any other company, body politic or corporate, or any individual person, or to deceive any officer of the association, or any agent appointed to examine the affairs of such association * * * shall be deemed guilty of a misdemeanor, and shall be imprisoned not less than five years nor more than ten.

There was no demurrer to the indictment or to any count thereof. There is no certificate of the facts proven, nor of *all* the evidence admitted on the trial. The bill of

exceptions (pp. 44–56) recites the evidence tending to establish the charges in certain of the counts, and the assignment of errors (pp. 41–43) show the grounds relied on by the plaintiff in error to support his writ here; they will be considered in the order of their assignment.

ARGUMENT.

(1) W. J. Hays, a witness on the part of the United States, after testifying to his familiarity with the system of bookkeeping of national banks, his recent examination of the books of the First National Bank of Little Rock, and the sum of money as due said bank as shown by said books on account of overdrafts at the close of business on the 1st day of March and the 12th day of July, 1892, the only dates respecting which the defendant Allis was charged with making false entries as to overdrafts, was asked by the attorney for the United States this question:

> Have you examined the books in reference to Mr. Allis' individual account, and are you able to state how it stood during the period of time covered by the counts of the indictment here? If so, state how his account stood in the matter of overdrafts to the bank from the 1st day of February, 1892, to the 10th day of December, 1892.

To this question the defendant Allis objected "for irrelevancy and incompetency." The witness answered the question (p. 41), and to the answer the same objection was made, and to the action of the court in overruling both objections exceptions were taken.

Neither the question or the answer were "irrelevant" to the issue. The defendant was charged with having

caused himself to be credited on the books of the bank of which he was president with the sum of $50,000 on the 22d of February, 1892, when in fact there was not that sum on deposit subject to his order or check. In order to ascertain if this charge was true, it was necessary that the state of the defendant's account with the bank should be in evidence. Upon the true condition of his account at that date did the truth or falsity of the charge depend. The answer disclosed that the defendant's account with the bank was overdrawn on the 8th of February, $91,000; on the 1st of March, $57.23. This certainly tended to show that the defendant did not have on deposit, subject to his check or order, on the 22d of February, $50,000.

Of the weight and sufficiency of the evidence, the jury alone was to judge; but of its relevancy to the issue and consequent admissibility the court had to determine, and there can be no doubt but that its judgment in this instance was correct.

To the objection for "incompetency," no grounds are indicated whether the incompetency was personal and related to the witness himself, by reason of interest, mental condition, etc., or whether to the means and instrumentalities through which it was sought to ascertain the fact, does not appear.

The witness was offered and admitted as an expert in the bookkeeping of national banks. He testified that he had examined the books of the First National Bank of Little Rock, and especially the account of the defendant in that bank.

If the objection related to the manner of giving the contents of the bank's books, without the actual production

of the books themselves, it may be suggested in reply that to the average jury the books of a national bank would be as unintelligible as if the entries were made in hieroglyphics.

And the only means by which the true state of an account, as it stood upon those books, could be presented to the jury, would be through an expert accountant.

But it was not sought to introduce before the jury the contents of the bank books, but only the conclusion or opinion of the expert who had examined them as to the state of the accounts, the result of the entries in the books, and of the method of their arrangement.

(2) Yost, another witness on the part of the United States, testified in chief that he was the general bookkeeper of the First National Bank of Little Rock, and that on the 22d of February, 1892, he entered on the books of the bank a credit of $50,000 to defendant Allis on a "credit slip" written by said Denny and—

> A charge of $25,000 each against the First National Bank of New York and the Southern National Bank of New York, on charge and credit slips written by said Denny: That he made out the reports to the Comptroller of the Currency of the condition of the bank at the close of business on the 1st of March and 9th of December, 1892, respectively, in accordance with the books, and delivered the latter to Allis, and that when Allis returned it for copying in ink it had been changed, so as to show a hundred thousand dollars of bills and notes, rediscounted, less than the books showed; and a hundred thousand dollars more of individual deposits, subject to check: That he, by direction of Allis, changed the March report, and also the books, to

make them correspond with it. Testifying further, on cross-examination, that he made out all the reports, except the one for June, 1891; and that he made out the report next preceding the 9th of December report—for September 15—which was signed and sworn to by said Denny, when Allis was absent from the State.

This witness was asked by defendant Allis's attorney this cross-question:

Mr. Yost, I will ask you if that September report, made out by you, and signed and sworn to by Denny, did not contain the identical change of a hundred thousand dollars from the items of bills and notes rediscounted, to individual deposits subject to check, that is contained here in the December report?

To this question the counsel for the United States objected; the court sustained the objection; the defendant Allis excepted.

The charge of the indictment was that the defendant had made false entries on the 22d of February, 1892.

The question propounded here, and excluded by the court, was whether the defendant had or had not repeated this false entry in September, 1892. Whether he had or had not so repeated it would seem to be altogether irrelevant to the issue here, which was whether he had made such a false entry in February, 1892. And certainly no light, beneficial to the defendant, could be shed upon this inquiry by showing that if he had made such false entries in February, he had repeated them six months later, in September.

Some aid might possibly be derived in repelling the charge of criminal intent, by showing that false entries, alleged to have been made by the defendant in February, had in fact been made six months *before*, and had probably been only repeated by him mechanically and not intentionally. But no such aid could be derived from the fact that the defendant, having committed the offense in February, had repeated it six months later in September.

The question directed the mind of the jury to a distinct and immaterial issue, and was intended to divert them from the real and single issue which they were engaged in trying.

(3) W. C. Denny, the cashier of the bank (p. 42), testified to the entries of February 3 and February 22, 1892, saying that Allis, before he left the State, about the 25th of January, 1892, told him to have the entries of February 23 made, and that he did so; that on the 20th of February, 1892, he received from New York a cipher telegram in Allis' name, under which he had the credit to Allis of $50,000, and the charges of $25,000 each to the Southern and First National banks, of New York, made on the 22d of February.

This telegram was then offered in evidence, but the defendant Allis objected for irrelevancy and incompetency; the court overruled the objection and admitted the telegram; the defendant excepted.

The charge, in the only count of the indictment on which the defendant was convicted, was, that he had made "and caused to be made" in the books of the bank, a certain false entry to his credit.

If the defendant did send this telegram to Denny, the cashier of the bank, directing an entry of $50,000 to be made, and upon that direction Denny had made the entry and the entry was false (of all which facts the jury alone were to judge from the evidence), then no element of proof could have been more relevant and competent and convincing of the fact that the defendant had caused such entry to be made than this telegram. As to the interpretation and construction of this telegram, the jury were to be the judges under proper instructions from the court. It was in symbolic language; of the true meaning of the symbols the witness, who was cashier, and the president, who is defendant, alone had knowledge. And that knowledge was material to the inquiry here, because if the jury believe that the defendant had sent the telegram, and that it related to the subject of their inquiry, it was proper and necessary that they should know what the telegram was. Had the telegram been in a foreign language, instead of in cipher, there can be no doubt as to the admissibility of evidence to show the meaning of the foreign tongue, even by an expert whose testimony might be mere matter of opinion. But here the meaning of the cipher was shown by one having absolute knowledge of it and the only disinterested person who had.

(4) The only portion of the charge delivered by the court to the jury to which an exception was taken is embraced in this assignment of error (p. 43). It is as follows:

> It appears from the evidence that on February 20 Mr. Allis had drawn out of the bank $42,180.65 more than he had deposited in it. There is a tele-

> gram in evidence which, if it was sent by him and is correct, directed the cashier of the Little Rock Bank to charge the First National Bank of New York $25,000, the Southern National Bank of New York $25,000, and to credit his account $50,000. The officers of those banks testify that Mr. Allis never deposited either of these sums with them. No witness says that he did; and if you believe their testimony, these entries are false. You have the telegram in evidence, and Mr. Denny testifies that it was received by him in cipher. The defendant Allis received through it a false credit of just $50,000, and if he caused the entries to be made, with what intent did he do so?

So far as this charge states the evidence before the jury, it must be taken to be true, for there is no certificate of facts proven, or of the evidence heard, by which the statement in the charge can be tested. And where evidence tended to prove a fact, and no evidence was offered to the contrary, the court was justified in treating, in its charge to the jury, that fact as proven.

Now in this charge the court, referring to the telegram, said: "There is a telegram in evidence, which, *if* it was sent by him and *is correct*," etc.

The court here decides nothing except the interpretation of the paper offered in evidence; its weight and bearing upon the issue are left altogether with the jury. It was left to the jury to find whether the telegram was sent by the defendant, and, if so, whether the telegram sent by him was the same as that which had been offered in evidence and translated before them. The jury found both these facts against the defendant, and the correctness

of their finding is not questioned here. There can be no serious question as to the correctness and propriety of the charge given by the court to the jury.

The court proceeds then to the question of intent, and, after stating that the defendant Allis had received through the telegram a false credit of $50,000, said:

> If he caused the entries to be made, with what intent did he do so?

That the defendant had received, through the telegram, a credit of $50,000, and that this credit was a false credit, were facts which, so far as this record discloses, there had been no attempt to contradict. There was, on the part of the defendant, in his own testimony (p. 51), an effort made by denying the correctness of the translation of the telegram, as given by Denny, to repel the charge of defendant's responsibility for the false credit given to him, and thus to repel the charge of any criminal intention. And so the matter of defendant's responsibility for such false entry was left entirely to the jury, and they were told in the charge that they should inquire into the intent with which such entries had been made by defendant only if and when they believed that he had caused these entries to be made. To this branch of the charge we find it impossible to discover any just grounds of complaint on the part of the defendant.

(5) The refusal to grant a new trial was no ground of error.

HOLMES CONRAD,
Assistant Attorney-General.